EWS THE QUOTA TO END ALL QUOTAS

- AMBEDKAR AGE COLLECTIVE

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THE SHARED MIRROR

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EWS

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- AMBEDKAR AGE COLLECTIVE

Published by

THE SHARED MIRROR

WE WOULD LIKE TO THANK

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ABOUT THE BOOK

The 10% EWS reservations have now come to be. While the timing of the legislation, just before the 2019 general elections, was clearly geared to benefit the BJP, the groundwork had been carried out since the days of Mandal II. What was the Bahujan response to this upending of the logic of reservations? Broadly speaking, close to nothing.

On a conference call with Bahujans from across India and abroad (February 2019), the anger and frustration were palpable. There had been no resistance when the bill was introduced. In fact, no resistance was even being expected. Even worse, there was no channel for building up to an immediately effective resistance. There was a clear disconnect with most of the Bahujan parties, which, other than the few exceptions, have mostly ended up being collaborators of the brahmin-savarna parties. Of the politics around reservation, as with other issues, alert Bahujans know the history, unravel the strategies, call out the tactics. Even a free-flowing conversation in the conference call had covered most of the ground in a few hours. But then, how did 'they' get away with this brazen legitimization of disproportionate representation? That is the power of the governing class and the sophistication of their methods.

Beginning with SC/STs and followed by OBCs, reservations enabled increasing numbers of Bahujans to enter public institutions. However, substantial energies of the Bahujan were spent simply defending reservations (and themselves) against the torrent of abuse and nastiness from the brahmin-savarna: *You are not wanted, you do not belong here, you do not deserve to be here, you lack merit, you're getting*

undue advantage, you're cheating the truly deserving ... ad infinitu
At the administrative level, the provisions of reservation policy we
diluted in a number of ways: interpreting general/open quota
upper caste quota, manipulating interview scores vs. cutoffs, citi
lack of qualified candidates and converting reserved seats to gene
(upper caste) seats, casting reservations as a poverty alleviati
scheme, imposing creamy layer restrictions, creating super-special
cordons ... and on and on.

The body blows now landing, building on the gradual erosion strate
of years past, are the consolidated response of the governing class
the success achieved by progressive Bahujan politics until the ea
2000s. When the faux-liberal, faux-secular political formation (t
Congress) was seen to have ceded too much ground and becor
less effective in enforcing the caste order, a more crude, aggressi
strain (the BJP) took over. The governing class and its interes
remain the same, only the overt methods and personnel of choi
have changed.

The counter-revolution is here. How will the Bahujan respond?

~ Sundeep Pattem

‘EWS IS A DISASTER’

ECONOMIC CRITERIA IN RESERVATION:
AN INVITATION TO COUNTER-REVOLUTION

Dr. Suresh Mane, interviewed by **Rahul Gaikwad**

Rahul: *Sir, I would like to know, in the present context, the implications of 10% reservations that is being given to the upper castes and how these particular reservations have come about.*

Dr. Mane: First and foremost, to understand reservation policy, one needs to have a comprehensive knowledge. When I say comprehensive knowledge, it means, its sociological background, its compensatory jurisprudence, its legal framework, its evolution through court decisions, and finally, the politics of reservation policy. All these issues need to be understood in a proper perspective, and then we will be able to answer all these questions.

First and foremost, the Constitutional reservation policy is only for three classes: Scheduled Castes, Scheduled Tribes, and Backward Classes. Subsequently added classes, such as in Maharashtra, they are called the 'vimukta jatis' or nomadic tribes. But nowhere in the country, there is any reservation for any other class, group or caste or group of caste - that is very clear.

Now, the Scheduled Castes and Scheduled Tribes reservation is based on a compensatory package. Compensatory package means, it is the compensation from the Constitution and State for the historical, sociological, economic, cultural and other kinds of exploitation, persecution, discrimination, and all kinds of odds against those castes and tribes. So they have been compensated in the form of Constitutional reservation policy to enable themselves to advance in each and every walk of life. At least in education, government

employment and politics, they have been provided with reservatio of seats.

Now, coming to the recent change which is occurring in the who package of Constitutional reservation policy, that is, large groups people are demanding reservations, like Marathas in Maharashtr Patels in Gujarat, Jats in Rajasthan, or Gujjars in Haryana. Wheth they can be given reservations and under which category, that is th question being debated these days. In order to give reservations, th Constitutional parameter is social and educational backwardnes besides caste and untouchability. Economic parameter is nowhe mentioned in the entire text of the Constitution.

In this light, you have to understand the validity of 10% reservatio given to the poor among the upper castes. First and foremost, th reservations granted to Jats in Rajasthan, Patels in Gujarat, Maratha in Maharashtra have been struck down by the respective Hig Courts in those states. On the same grounds, - they are not in tha category of backward classes, number one. Second, by giving the reservations, the reservations exceed 50%. The Supreme Cou says in exceptional cases, you can exceed 50%, but these are n exceptional cases, and they failed to stand the test of the law, ar have been nullified.

Recently, for 10% reservations, amendments have been made to th Articles 15 and 16 of the Constitution. Whether they will sustai the answer is no. Because 50% ceiling is imposed by the Mand judgment of 1992, which was delivered by 9 judges. Unless, to tha effect, a constitutional amendment is passed, no reservation ca exceed 50%. And while passing these recent amendments, the is no amendment to that effect, that is, for reservations exceedi 50%. For that area, as it is, Mandal judgment stands, this will n stand.

Secondly, such an amendment is ultra-vires against the bas structure of the Constitution. Basic structure of the Constitutio includes reservation for the minority, not for the majority. That wa the view of the framers of the Constitution, including Babasahe Ambedkar. And therefore, giving reservation for 60%, 70%, 75%, against the spirit of the Constitution. Barring states like Tamil Nad

where it already existed prior to the Constitution, and therefore it is an exception. Tamil Nadu model cannot be applied to other states. And even for Tamil Nadu reservations, which exceeded 50%, is subject to judicial review, which is pending before the Supreme Court. And therefore, this 10% reservation is also against the basic structure of the Constitution.

Rahul: *One question that comes to mind, whether the 50% cap is itself constitutional?*

Dr. Mane: Yes, the 50% cap is laid down by the judgment of the Supreme Court, it is not laid down in the Constitution. But, while interpreting the Constitution, we have adopted a classification of minority-majority consensus, and reservation limited to few groups, not all groups. So within this framework of the Supreme Court's laws, this new 10% cannot be done, as a result of Mandal cap. Now, Parliament has to remove the cap.

Rahul: *Was this cap a recommendation of Mandal?*

Dr. Mane: No, it was a Supreme Court judgment. If the Parliament wants to exceed the cap, it has to first remove it, it has to pass separate legislation. Secondly, can you give reservations on economic criteria? Again, Mandal says no. Not only Mandal, after Mandal, all judgments delivered by the Supreme Court have refused to recognize reservations on the basis of economic criteria. And poverty is an economic criteria. It is not a social criteria. It is not a backwardness criteria. The government has a limit of 8 lakhs, which means more than Rs. 66,000 a month. If that is the definition of the poor man in India, then India is a rich country in the world. That is again a big mistake by the Central Government, which will not stand.

Coming to the last issue, that is the 13-point roster, which is now in a much controversy, debate and discussion. Actually, it is 13-point model roster, it is also called as 200-point roster. Earlier, before 1995, we had a 40-point roster, then it was 100-point roster. After 1995, due to the judgment of the Supreme Court in the R. K. Sabharwal case, we have a 200-point roster. And 200-point roster is also called as 13-point model roster. Now, people are agitating against the UGC appointments, especially of the professors and teachers in

universities and colleges. But this law was laid down in 1995, when the Supreme Court delivered the judgment. In 1997, there was an OEM of the Government of India to implement this judgment. In the judgment, it is categorically stated that, hereafter, the vacancy based roster will not operate, the post-based roster will operate. And therefore, 13-point roster is nothing but the post-based roster.

And the 1995 R.K. Sabharwal judgment has also stated that till SC/ST representation in a respective cadre attains to their proportional reservation, til that stage, vacancy-based will continue, and after that it will switch over to post-based roster. Now, the recent Supreme Court judgment with regard to the appointments of professors, readers, lecturers, has made it post-specific. Reservation in teaching area has to be post-specific, this law has been laid down by various courts since 1990. That is not new. In 1990, Bombay High Court in one of the cases where a SC man went to court. Earlier the post was SC, then it was made General, so a SC man went to the Court. Bombay High Court delivered the judgment that the reservation has to be post-specific. Otherwise, the management gets the authority to shift the reservation as per their convenience to deny the benefits. So, therefore, post-specific reservation has been provided. Now people are saying, in 13-point roster, SC point is at 6 number, and ST point is at 13 number. But it goes on rotation. After rotation, again you have the SC/ST point. Through the 13-point roster, whether our reservation is upto 50% or not, that is the vital question the people should focus on. Otherwise, the legal position is very clear, there is nothing wrong.

Exactly. You clear the vacancy-based roster. If there is no post-specific, then suppose in one department, 3 or 4 professor posts are there. Once the SC candidate becomes eligible in a particular subject, they will shift the reservation. So, they should not shift it and therefore, there is a need to have a post-specific reservation. That is exactly what the law is laid down. And it is a correct law laid down by the honorable Supreme Court and various High Courts. Whereas the UGC has made a mistake, in its circular of 2006. UGC has not updated its circular, so its circular has been struck down in the recent Tiwari case. It is not going to damage the interests of the SC/ST people, they do not need to unnecessarily worry and have

tension, that in future they will not have jobs. To a certain extent, a misunderstanding has been created. Isolated posts, like professor posts, scientific research posts. Again, Supreme Court law is very clear, there is no reservation to such posts. So, some benefit, some loss, it is a mixed bag.

Rahul: *Coming back to the 10% reservation, is it going to affect the interests of SC/ST/OBC people?*

In what way? Keeping intact SC/ST reservation, if the government decides to give 10% to weaker sections of upper castes, directly there will not be an impact, but indirectly, it will have an impact, it will be a big disaster. Once in the garb of reservation to poor among upper castes, the criteria of economic backwardness is introduced, in future, this criteria may be advocated for SCs and STs. That is the biggest danger. That danger, Mayawati cannot understand, Ram Vilas Paswan cannot understand, and you need not talk about Ramdas Athavale, he cannot understand. There are several of our leaders, intellectuals, and people who cannot understand that when they support reservations to other classes on economic grounds, they are inviting the counter-revolution in future.

Rahul: *Absolutely. I think that about sums up, Sir. Thank you very much.*

RESERVATION BASED ON ECONOMIC STATUS WILL ANNIHILATE SOCIAL JUSTICE

Dr. Thol. Thirumavalavan, interviewed by **Suresh RV.**

(This discussion was held on 3.5.2019, before Respected Dr. Tho Thirumavalavan was elected Member of Parliament. We express ou sincere thanks to him for giving us this opportunity and our best wishe for his victory in the elections. The discussion was based on the topic o 10% reservations given to the economically weaker sections among th upper castes.)

Sir, first and foremost, what is your opinion on the 103rd constitutiona amendment act that provides reservations to the EWS among th upper castes?

Many are debating from the perspective that the 10% reservation are given to the upper castes. Though it might be basically true the important premise of this reservation happens to be based o economic criteria. Rather than the point that it is given to the uppe castes, the more important point that should be focused on is tha it is primarily based on economic criteria. Social justice has been th only basis on which reservations have been implemented until now Economic basis had not been considered a criterion before. Soci status and discrimination based on birth have affected all space such as society, politics, economics, and culture. As a result of whic many communities have been affected and thus have been identifie The basis for the principle of social justice is to ensure justice them. That reservations should be ensured to these affected peop in the fields of education, occupation, and politics so as to empow them in all fields, is the ideology behind social justice.

That reservations should be given to economically backward peop

has been a constant demand for so many years. This demand has been debated since the times when Jawaharlal Nehru was the PM. It was in the very same period, Ambedkar, the revolutionary, held the position of a cabinet minister. An extensive debate was held back then regarding whether economic status should be considered the basis to give reservations or not. The then leaders, national leaders such as Jawaharlal Nehru and Ambedkar, their contemporary leaders, the activists who had worked beyond the political spectrum, and the intellectuals had all held an extensive, deep debate regarding this. Yet, they all finally came to the conclusion that economic status should not be considered a criterion, and that the true democratic way was to consider social status as the only criterion. That is how reservations have been guaranteed in the constitution.

But, the Modi government has now enacted a law that grants 10% reservations based on the economic criteria. They have misled us and created an angle that this reservation is given to the upper castes and that those who are opposing reservations based on economic status are opposing the upper castes and denying the rights of the upper castes. Those who are upper castes happen to enjoy a higher social status in society. Some of them might be economically backward, we cannot deny that. There are high chances that they might be backward in education and employment too. They happen to be in fact backward too. But their social status opens all the doors for them. Be it any space whatsoever. Therefore, in order to achieve what they want, there exist no impediments and crises. Hence, the then leaders divided Indian society into two: as socially advantaged and socially disadvantaged based on their social status. As it only social status that determined access to education, employment, and political power to many people, such as the scheduled castes and backward classes. The principle of social justice was created in order to compensate for that, and hence, social status was chosen as the sole criterion to restore all the denied rights to the disadvantaged people. Despite some of them being economically forward, owing to the fact that they happen to be backward classes, most backward classes, dalits, and tribals are being constantly humiliated on a rampant basis even today. Whereas, despite being economically backward, their higher social status grants the upper castes greater respect and esteem.

Therefore, keeping in mind this difference and contradiction, w
cannot consider economic status a criterion, only social status
relevant. This is social justice. And so, in order to bury social justi
based reservation they have enacted a law that enables reservati
based on economic status. Their intention is not mainly to gi
reservation to upper castes but also to oppose and prevent indirec
the reservations given to BC, MBC, SC, and ST. In order to slow
put an end to the practice, in the name of giving reservations
upper castes, they have brought in reservations based on econom
status. So, their main intention is to bury social justice. If we consid
economic status a criterion or a unit for giving reservations, in t
days to come, discussions on social justice would slowly cease
be. Therefore, they have brought in this 10% reservations keepi
in mind that they can slowly destroy the rights granted to all tho
who have been hitherto oppressed and made backward, in the nam
of caste and religion. More than to truly help the upper castes, the
real intention has only been to completely destroy the social justi
based reservation given to SC, ST, BC, and MBCs. So, we are opposi
the idea that economic status should be considered a criterion
give reservations. We should not see it from the perspective that w
do not want anything to be done for the upper castes. The state c
help them by any other means. They can be given loans, or throug
any other means, they can provide them with opportunities. B
enacting a law to bring in reservation based on economic statu
so as to completely annihilate social justice based reservation,
highly condemnable. We are opposing it on the grounds that this is
regressive step taken towards annihilating social justice.

***In general, how do you view the Creamy layer in OBC reservation
Also, many Ambedkarites opine that this amendment is the first st
towards the implementation of creamy layer in SC/ST reservation
What is your opinion on their views?***

Creamy layer is the first strategy that they used to bring reservati
based on economic status into implementation. Because of t
fact that we had allowed the creamy layer earlier, it has becom
convenient for them to enact the 10% reservation amendment
today. That it is applicable only in the OBC reservations, and so, t
SC/STs need not bother about it, is a wrong view. There exists a sta
that the social security granted to the SC/STs can only be ensured

protecting the social security granted to the OBCs, and vice versa. Therefore, if the reservations given to the OBCs are affected by any means, then it will affect the SC/STs too. The creamy layer may seem right if looked at from the surface. But only if keenly observed we can understand their treacherous ploy. There naturally arises a question, whether those coming from successive generations too should avail reservations in education and employment. Within the slot given to the SC/STs, the students from the SC/ST communities alone happen to compete with each other. So, this does not affect students from other communities. Among them, truly speaking, many have started to get educated. From first generation graduates, there have emerged second generation and third generation graduates. Instead of giving room for questions to rise such as, whether someone whose father happens to be a judge and mother happens to be a professor should get reservations again or not, they should voluntarily decide to compete in open competition. If they do so, there would not be any need to discuss creamy layer.

The students from the BC, MBC, SC and ST communities who are from the second generation and third generation graduated families, or are capable enough to study well owing to their better financial status, should voluntarily include themselves in open competitions. Them being adamant that they will not include themselves in open competition but will compete only in the slots allocated to SC/ST and MBC is the primary reason why questions regarding creamy layer are being raised. That is, the claim that only a few from a community are getting benefited by the reservation policy. If the already well educated and financially well settled people are going to compete in education and employment then they should voluntarily include themselves in open competition. If they do so, there would not take place any debate as regards the creamy layer. There also would not be a possibility for the students from the third and fourth generation beneficiaries of reservation from SC, BC and MBC communities to affect the chances of poor students from their respective communities. Therefore, the problem lies in how we approach the creamy layer policy. But those from the ruling-governing classes use this as a garb to bring in reservation based on economic status, in order to slowly bring an end to reservations given to dalits and backward classes. This is a death knell for social justice. A grave

danger. VCK does not accept the creamy layer because it may lea
or has led to bringing in economic status based criteria.

***At the central level there was a 50% cap and now they have adde
10% EWS reservations making it a total of 60% cap on reservatio
in central institutions. At the state level, in TN, 69% reservations a
being given in state institutions. Do you think that the centre shou
follow TN in this regard?***

69% reservations given by TN is different from the reservation
given by the centre. We should not confuse them both. The stat
government gives reservations based on the population with
the state. The central government gives reservations based on th
population of the entire nation. At the central level, 15% is allocate
to the SCs and 7.5% is allocated to the STs, and so in total, 22.5%
reservations is allocated to the SC/STs. The OBCs are given 27%
reservations. Since there happens to be a 50% cap on reservation
the OBCs are given only 27% as the SC/ST share happens to b
22.5%. But in reality, the population has swollen largely. The S
and STs are more in number than 22.5%. The population of SCs ha
increased by more than 15%. But even today, they are executing th
old practice only. This is objectionable. This is a fraudulent act.

This being the case, regarding TN, the situation was that 50% shou
not be increased yet at the same time 69% reservations should als
come into force. Hence, lots of protests took place at a pan-India
level, and the centre too finally conceded and took a few step
occasionally to implement the same without affecting the 22.5
reservations of SC/STs. Despite that the state governments shou
not go beyond 50%, they added 19% along with the 50% cap makin
a total of 69%. This could not be reduced to 50% again. Also, the
could not lay their hands on the SC/ST reservations. To touch thes
50% reservations too was also tough. Therefore, a provision wa
included in the eighth schedule and thus being protected, so fa
That is, in order for the SC/ST/OBCs to access 69% reservation
this provision was included in the eighth schedule and is thus bein
protected. Therefore, the limits of reservations for the centre an
states are different. Despite protecting these two rights, we als
have to come forward to break the ceiling and give reservations
BC, MBC, SC, and STs based on their actual population size existin

today. This is the stand of VCK. So, even though the Supreme Court might have set the ceiling number, this has to be changed for the evolving times. VCK's demand is that the government should ensure that the SC/STs are granted reservations based on their actual population size.

As regards reservation policy, many Ambedkarite activists and thinkers have pointed out that the policy has not been implemented properly. In what way do you think the reservations are being implemented in the central and state institutions? Are the dalit-bahujans being properly represented?

The reservation policy has never been implemented properly. I believe this is a fraudulent act. Be it for SC/STs and also for BC/MBCs, reservation has never been 100% properly implemented. As regards SC students, they always seem to repeatedly claim that there are not enough deserving candidates. This cannot be accepted. Only around 5 to 6% reservations have come in to force. Even this, they use it mostly only to recruit for the powerless, lower level official positions. Therefore, in reality, the case being that only around 5-6% reservations have been implemented, it is our demand that in all the fields, 100% reservations should be implemented. That is, 22.5% given to SC/STs and 27% given to the OBCs should be implemented completely. Only then these people can be uplifted. Not many demand this these days. The governing classes, especially the Sangh Parivar groups, are keen on finishing even this reservation too and want to ensure there exists no reservation at all. The actual reality is that we have to fight consistently in order to protect social justice every day.

Of late, owing to the brahmanical discourses, the open category has come to be understood as a category meant only for the upper castes, which it is not. Do you think that a larger scheme is at play to limit it to only the upper castes, the 50% open category?

There is no hidden scheme or such. They are executing it openly. That the remaining 50% is applicable only to the upper castes is how it is being implemented even now. The communities which are given reservations are not being able to avail whatever slots that have been allocated to them completely. This being the case, they say that we do not have enough deserving candidates. There are

no reservations in promotions too. Because of which, all the to posts are being occupied by only the so-called upper castes, gener category higher caste people. Their population is meager in reali But their limit to access power exceeds over 50%. The practical tru is that the so-called general category people or in other words, th upper castes happen to infringe upon the rights and opportuniti of the reservation availing classes. The ones who want to prote social justice should understand this and indulge in transferring th deserving candidates from the BC, MBC, SC and ST communities general category. This is important. The deserving candidates fro the reservation availing classes who are capable enough to compe in the open competition should be considered general catego candidates. Only then the state of 50% being amassed by only or community would ultimately change. True social justice can also b safeguarded.

The central government has constantly brought in anti-bahujan a anti-states initiatives such as NEET, GST, and so on. Is this amendme a further step in the reduction of the voice of the states? Do you fe there is a centre vs. state angle to this issue?

As much as there lies truth in the approach of upper castes vs. oth castes regarding this issue, to the exact same degree there lies truth the ruling parties of the centre approaching it from the angle of centr government vs. regional government. They want the regional and th state parties to not grow stronger as the state parties forming th government in the states happen to weaken the central governmen Therefore, to establish a strong central government is their ma intention. The way they see a strong central government is one whi establishes one nation, one culture, and one rule. So, their plans are crush the rights of the states, trample on the aspirations of the regio and to make sure there exists no state party in the political spectru Just as they sharpen the difference between the upper castes a other castes, their intentions here are to establish a strong cent government and weak state governments, and slowly destroy t state governments or to establish the state governments of nationa central parties. In order to do this, they bring in several anti-state law More than considering it an anti-state measure we should consider a crushing of regional feelings. It is their wish to make sure there ne not be or exist any state party, in due course of time.

It was the Congress party during the year 2006 that formed a commission to study the case for EWS reservations. And now they have voted for it in the Parliament too. ADMK opposed the bill but eventually walked out before voting. BSP, the party that represents the interests of the bahujans, supported the bill and voted in favor of it. CPIM too opposed but voted in favor of it. What is your view on all this?

As it stands, this is a bitter truth. A common, unanimous thought process has not yet evolved among the democratic forces. It should happen. In order to make it happen people like us should work together. Therefore, despite all these bitter incidents, we have to ensure that we make democracy victorious.

What is your view on the caste census? Do you feel it is relevant to the current issue? Why do you think there is no prominent discourse regarding it in TN?

Caste census is highly needed to ensure social justice is implemented absolutely. In order to annihilate caste, social justice happens to be the first prerequisite. To ensure that social justice gets properly implemented caste census becomes highly important. Hence, VCK demands that caste census is very much important. A prominent discussion regarding the same has not yet taken place widely here in TN. It has to take place. And all democratic forces should come forward to do the same.

What is your view on the monopoly of the brahmin-savarnas in the Supreme Courts? Do you think that there should be reservations in the collegium system?

Absolutely. It is a definite must to implement reservations in judiciary, universities, higher educational institutions, security departments such as military and police department. This is why we strongly demand that there should be reservations in promotions. If that comes into force, reservations will automatically come into practice in all institutions such as military and judiciary. And, democracy too shall be preserved.

VCK has filed a lawsuit against this amendment act. Do you think that we can get a suitable judgment from the courts which happen to be under the control of the upper castes?

To move the courts is a symbol of resistance. We cannot say that they

have always given judgements against our interests all the time. Mo
of the times, we might have got judgements against our interest
But sometimes, some democratic forces in the form of judges hav
given us judgements that have fulfilled our expectations. So, it wou
not be a surprise if a rare miracle happens in this case too. I believ
that the honest and democratic forces will give a favorable judgmer
accepting our just demands.

So, you consider only a miracle could possibly happen?

If something happens rarely, we call it a miracle. Many times,
has happened too. We cannot say that all the judges have bee
against us or that all the officials have been against us every tim
There are many democratic people too. Justice V.R.Krishna Iye
despite being an Iyer, stood by the side of democracy and has give
many judgements. Similarly, Justice Chandru stood by the side o
democracy and has given us many judgements. Even today, at time
when we have least expected it, the Supreme Court has surprised u
by giving many good judgements. We have filed a case expecting th
probability of such an outcome.

***How does VCK plan on taking forward the challenge? Is it going to b
only on a legal basis or on socio-political basis too?***

This issue should be discussed on all platforms. We should no
create an image that we are opposing the reservations given to th
upper castes. Though this reservation might be given to the uppe
castes, we have to understand that it was not entirely brought i
to benefit them. It was mainly brought in to bring an end to th
reservation policy that benefits the downtrodden classes. And so,
social justice has to be safeguarded the Act that guarantees this 10
EWS reservation has to be repealed. There is a need to approac
this on a legal basis. There is also a need to take it to all platform
such as society, economy, culture, etc. That is how VCK approache
this issue and is intent on taking forward the issue.

***Did VCK raise its voice against EWS reservations in the Save Natio
conference that it recently held? Since you said we have to save th
nation, do you think that this EWS reservation bill represents the w
of the nation?***

In the Save Nation conference, we have passed a resolutio

claiming that this 10% EWS reservation is an attempt to finish off social justice and so, the Amendment Act has to be repealed. Also, we have planned to take this issue to the masses. If this state of affairs continues, in due course of time, the principle of social justice would get destroyed completely. There would not be any discussion regarding it. Therefore, the main stands of the VCK party are that this Act should be repealed and that the awareness pertaining to this issue has to be spread.

But still, there exists a stoic silence in Tamilnadu, from the general public to most of the political parties, regarding the EWS reservations. Why do you think the people who came out to the streets in large numbers during NEET--Anita's death, Jallikattu, Anti-Sterlite protests--have not come out so now?

At least, in Tamil Nadu, there exists some voice of dissent. In other states there exists none. The reason is because they have become sanskritised and hinduised. Many states and even many state parties too happen to function under the control of the Sangh Parivar. Therefore, to understand the nuances pertaining to this 10% reservations, they happen to experience some difficulties. Only if we brush aside the angle that this reservation is given to the upper castes we can understand the nuances to this problem. We have to understand from the basis that this is against social justice. Only then the question arises whether this reservation is given to the upper castes or other castes. Some face difficulty in grasping that this is primarily against social justice. It is so because they have been and are closely associated with the Sangh Parivar organizations. But regarding Tamil Nadu, since the Ambedkarite and Periyarist movement oriented people and the leftists are able to understand it clearly, we happen to oppose it vehemently.

In the past, Tamil Nadu had seen huge protests whenever it came to a challenge to representative rights. But now, other than moving the courts, none of the big parties such as the DMK have taken the issue to the streets. A meeting by the opposition parties was held at Periyar Thidal in which VCK too participated. Have our protest forms changed?

We cannot measure this by reducing its scope. In the past, the growth and the strength of media was less. Nowadays, if someone goes on a hunger strike the news spreads widely throughout the

world, to every nook and corner. Therefore, we should not com to a conclusion that only if lakhs have gathered on a larger scal it should be considered a protest, or that if it happens on a lesse scale it should be considered diluted. However, to oppose wha should be opposed and to do so at the appropriate time, is the mai characteristic of any protest. It could be either new parties joinin together and holding a protest, or it could be just a protest held b a single party, or it could have around 10,000 people gathered i it, or it could even have just 10 people. But a protest, is a protest nevertheless. It is an opportunity to display our resistance. Hence I consider that we need not compare the struggles of the past an the present.

Lastly, how do you think that our SC, ST, OBC people, our youngster and our bahujan civil society should take forward this issue?

Firstly, an extensive discussion on this should be started. Ou youngsters should take part in it to a larger extent. We should no see that social justice is given as some benefits to some particula communities on the basis of sympathy. We should understand that i is a legal right given to communities that have been hitherto denie rights for many centuries. So, there needs to happen an extensive discussion and awareness propaganda on social justice. I would lik to pinpoint the importance of this to the youngsters. Only if we star to grow our faith in social justice, would we be able to safeguar democracy. Social justice is the gateway or the entrance to democracy If that gets destroyed, sanatanism will once again become victoriou here. The youngsters and civil society are the non-political mass. consider that it is important for them to spread awareness abou social justice in the society, to create extensive discussions, an on that basis, to come forward to safeguard democracy. Instead o thinking that all political parties work against the interests of th people, the bahujan civil society has to ally with the political partie by understanding that they too have an important role to play i taking forward the cause to the masses. We have to understand tha this should not be considered a struggle against the upper castes, bu rather be considered a struggle in order to safeguard social justice and also as a struggle to not allow reservation based on economi status but to continue it on the basis of social justice alone. This i what I expect of them.

For the first time, on behalf of Round Table India we are meeting you. Thank you for giving us this opportunity. Do you have a message or advice for Round Table India?

I convey my regards to Round Table India. I am aware that Round Table India is a democratic website that rightly identifies the democratic forces and registers their opinions. Round Table India has created a space for discussions to take place on democratic leaders such as Ambedkar, the revolutionary and Thanthai (Father) Periyar, in particular, and their principles and ideologies. I am delighted to know that some of the already published articles from Round Table India have been edited and released as books in the English language. Though there might be many media houses and websites around, the way in which Round Table India is engaging in such productive measures and allowing more space for youngsters to shine is highly appreciable. I convey my regards to Round Table India for giving me this opportunity.

*[Questions were framed by **Suresh RV** and **Radhika Sudhakar**]*

A MOCKERY OF RESERVATIONS

THE TEN PERCENT BETRAYAL

Bobby Kunhu

"Lost rights are never regained by appeals to the conscience of the usurpers, but by relentless struggle.... Goats are used for sacrificial offerings and not lions." – Dr. B. R. Ambedkar

Each time the DBA communities assert their political rights and manage to gain something, the savarnas find a way to subvert it either violently or through dubious and unethical means. This is an essential feature of the caste system, so nothing to be surprised there. But as the assertion increases, so do the efforts of subversion making it a continuous conflict! The illogical 10% reservations (hereinafter referred to as Ten Other Caste Policy - TOP for ease) for the economically backward communities is nothing but one such subversion. While the policy was moved without logic and defies every known theory and practice of affirmative action, opponents of the policy have clearly demonstrated with governmental data, the hollowness of the policy and continuing caste based discrimination.

The usual rhetorical questions that are used against caste based reservations being its effect on merit and punishing the present generation of savarnas for the sins of the past are easily answerable to anyone who wants to listen. Merit is nothing but a euphemism for accessibility in India and there are enough studies that demonstrate the lack of accessibility being proportional to one's status in the caste hierarchy. Insofar as the second objection is concerned, it is a fact supported by official data that the sins aren't in the past at all, but continue in the present as well with equal overt and covert violence, be it massacres for political assertion, inter caste love or

simply representation in political bodies or jobs. Post TOP, there ha been **enough research** to show that caste based reservations hav never been implemented properly and diversity and representatio be it in PSUs or central universities remain abysmal for SC/ST an worse for other backward castes.

Quota representation in all 40 central universities

PROFESSORS	
TOTAL	**1,125**
SC	39 (3.47%)
ST	8 (0.7%)
OBC	0
GENERAL	1,071 (95.2%)
ASSOCIATE PROFESSORS	
TOTAL	**2,620**
SC	130 (4.96%)
ST	34 (1.30%)
OBC	0
GENERAL	2,434 (92.90%)
ASSISTANT PROFESSORS	
TOTAL	**7,741**
SC	931 (12.02%)
ST	423 (5.46%)
OBC	1,113 (14.38%)
GENERAL	5,130 (66.27%)
NON-TEACHING STAFF*	
TOTAL	**5,835**
SC	523 (8.96%)
ST	248 (4.25%)
OBC	694 (10.17%)
GENERAL	4,443 (76.14%)

**Does not include category for persons with disabilities.*
Source: Data upto April 1, 2018, provided by the UGC to The Indian Express under RTI

The narrative that TOP is tryin to project is that reservation are welfare largesse that dependent on the governmen and that those receiving benefit of reservations are essentiall at the mercy of the governmen of the day. This is not onl patronizing and condescendin but also blatantly casteist an contrary to how the history o reservations happened. TOP, i essence, is the betrayal of th foundation based on which th Indian state was formed an that not many people are talkin about it is what angers me.

To understand this, one ha to go a bit into the history o the negotiations and conflict that led to the formation of th Indian state itself. The root of goes to the second Round Tabl Conference, where Gandhi bein the sole representative of th Congress party was unhappy wit the separate category that ha been included at the conferenc for the Depressed Classes (today's Dalits and Adivasis) represente by Ambedkar, Rettamalai Srinivasan & Rao Bahadur Mylai Chinn Thambi Pillai Rajah (M. C. Rajah), for he was of the opinion tha they were to be included under the larger umbrella called Hinduism

Ambedkar's advocacy within and outside the conference ended up being successful with the British government agreeing to treat the Depressed Classes as a category separate from Hindus and the resultant Ramsay MacDonald's Communal Award recognizing depressed classes as minorities and giving them separate electorates along with forward caste Hindus, Muslims, Buddhists, Sikhs, Indian Christians, Anglo Indians & Europeans.

Mohandas Gandhi was very upset at what he perceived as a division of Hindus. But at the root of the problem was that varnashrama dharma or the caste system was at the root of his spiritual ideology. Gandhi, being the man who was used to getting what he wanted went on a fast unto death at Yerwada jail where he was imprisoned and the Congress organized an all India Depressed Classes Conference to lobby, pressurize and negotiate with the representatives of the government and depressed classes to give up the separate electorates awarded to them. While the meeting was convened under the chair of the arch-Hindutva ideologue and a Brahmin Pundit Madan Mohan Malaviya, Ambedkar refused to be a part of the conference. His take was that he could not be bothered about Gandhi's blackmail and give up something that would go a long way in social and political mobility of Dalits. M. C. Rajah acted as the interlocutor between Gandhi and Ambedkar – but with no success. It was only when Ambedkar was worried about the violent backlash Gandhi's death can cause to the Dalit communities that he agreed to negotiate that resulted in the Poona Pact signed on behalf of Mohandas Gandhi by Malaviya. In short, Gandhi broke his fast for Ambedkar giving up separate electorates for reservations! That is the story of reservations making a political entry into the constitutional history of India.

I need to make a diversionary but important mention here that reservations were already in force in South Asia in the kingdom of Kolhapur (and in other princely states like Mysore and in the Madras Presidency etc)), where the ruler Chhatrapati Shahu enraged by the stranglehold of the Brahmin community on all jobs and knowledge in his kingdom decreed through an administrative order in the State Gazette dated 26th July 1902 *"His Highness is pleased to direct that from the date of this order, 50% of the vacancies that may occur shall be fixed by recruits from among the backward classes. In all offices in which*

the proportion of officers of the backward classes is at present less tha 50%, the next appointment shall be given to a member of those classes

However, the idea of reservation within the Constitutional histo of India starts with Poona Pact and the Depressed Classes givi up separate electorates for reservations and this eventually gettin incorporated into the Government of India Act, 1935 – which is th essential skeleton of what the administrative structure of the futu Indian state and it's constitution would be! This clearly refutes th savarna notion and false assertion that reservations are some kin of state largesse that had been incorporated into the Constitution India. In fact, apart from the jurisprudence of affirmative action an justice, it is a right that was hard won by the Dalits – in a macab way in return for a more progressive and enabling right – separat electorates, so savarnas could retain control over the future of th Indian polity. And it is not accidental that Ambedkar regretted tha agreement which was purely blackmail.

While, it would be pointless to discuss the hypothetical politic structures and mobility that would have emerged had the Poon Pact not happened and separate electorates for the depresse classes had been incorporated into the 1935 Government of Ind Act and therefore the Constitution of India – it would be pertine to point out that though caste would not have got annihilated, th political and social mobility of DBA communities would have bee so much more visible and influential.

There have been many arguments about the statistical an jurisprudential fallacies that have gone into framing TOP, but m argument is that the biggest fallacy is the projection of TOP as som kind of a socio-political right for the poor in a neo-liberal state f they have absolutely no claim to it. On the contrary TOP, but it subversion of the jurisprudence of reservations and is essential reneging on one of the most important political foundations which the Indian Constitution was negotiated – and therefore further betrayal of the Poona Pact and the Constitution of India.

To top it, TOP was legislated by a parliament that is still predominant led by a savarna discourse and populated heavily by dominant caste executed by a more savarna executive and to be tested by the mo savarna of the Indian state institutions, namely the Judiciary in

Supreme Court which has 23 savarnas (including the two Muslims and a Parsi), two OBCs and one Dalit! The very Supreme Court that has hit out at the foundations of the idea of reservations by holding that reservations should be computed for department wise vacancies rather than institution wise vacancies in universities. In a country where the representation of DBA communities in universities is already abysmal (as can be seen in the picture given above) and managements regularly try to thwart reservations, it is estimated that recruitment of Dalits and Adivasis alone would be slashed by 50-60%! I only see further abrogation of the Poona Pact through whataboutery, lies and pure political bullying. To paraphrase Kuffir, India is entering a phase of Jim Caste laws – where TOP is only the wedge that opens the political spectrum to further subjugate and undermine laws and legal systems hard won by DBA communities!

"To me, the thing that is worse than death is betrayal. You see, I could conceive death, but I could not conceive betrayal." – el-Hajj Mallik el-Shabbazz

THE REPUBLIC OF RESERVATIONS

Dr. N. Sukumar

The principle of merit is largely undefined. However, the social a economic worth of individuals and institutions are valued on t amorphous principle. Any standard definition of merit will again fe the myth of the "family farm" comprising of parental backgrou educational alma mater, economic occupations, physicality a geographical location. Needless to say, these privileges are availab only to a chosen few who are then considered as 'meritoriou 'worthy' and the 'best'. For ages, the idea of merit was instrumental barring dalit-bahujans, adivasis and women surviving on the margi from the domain of Sarasvati. We need to recall that the edifice merit is constructed on Eklavya's thumb.

The autarchic Indian society was rudely jolted by colonialism and order to create a servile bureaucracy, the British invested in educatio Gradually, knowledge became secularized and scriptural traditio were being critiqued by Jotiba and Savitribai Phule, Iyothe Tha Panditar, Pandita Ramabai, Begum Rokeya, Ambedkar and Periy to name a few. Intense intellectual battles were fought to safegua 'pristine tradition' but women and dalit-bahujans got a foothold accessing education. After independence, the Constitution provid for reservations in education and employment for the schedul castes and tribes for socio-economic mobility.

Constitutional Provisions

On January 26, 1950, India ended its 'Dominion' status, becar a republic, and put in effect its new constitution. The strategy affirmative action is usually deployed to win over the support of t

marginalized or under-represented sections of society. The public policies in support of affirmative action are generally justified in the name of equity, justice and democracy. The underlying goals said to be served by affirmative action policies in higher education generally comprise compensation to the victims of past discrimination and maltreatment, redistribution of resources and opportunities from the privileged sections of society to those worse off, motivating students from lower socio-economic and disadvantaged classes to aspire for better positions in society, better appraisal of students in terms of potentiality and productivity, higher quality education and learning due to prevailing diversity on campuses, better access to social capital in terms of useful contacts and networks for improving career opportunities, improved chances of integrating the societal elite in terms of race and ethnicity, fostering a more legitimate and vital democratic order, etc.

With an entire section dedicated to 'Fundamental Rights', the Indian Constitution prohibits any discrimination based on religion, race, caste, sex, and place of birth through Article 15(1). This law extends to all public institutions, such as government-run educational facilities, to access hotels and restaurants, public employment and public wells, tanks and roads. The practice of untouchability is declared illegal by Article 17. Significantly, Article 15, which prohibits discrimination, also contains a clause allowing the union and state governments to make "any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes." This provision was added in 1951 within weeks of a Supreme Court decision outlawing quotas in school admissions. The speed of the amendment is indicative of the strong political support for reservations. Similarly, Article 16, calling for "equality of opportunity in matters of public employment," contains clauses permitting the "reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State" and another allowing "reservation in matters of promotion" for Scheduled Castes and Scheduled Tribes[1].

A separate section of the Constitution, "Special Provisions Relating to Certain Classes," requires the reservation of seats in the "House of the People," or Lok Sabha, and the Legislative Assemblies of the

states for the Scheduled Castes and Scheduled Tribes[2]. The numbe
of reserved seats are determined by the proportion of the Schedul
Caste and Scheduled Tribe members to the general populatio
based on population estimates from the most recent decenn
census. The President of India and the Parliament, in consultati
with the state governments, determine the list of groups qualifyi
as Scheduled Castes, Scheduled Tribes, and "backward classe
Regarding the reservation of jobs, Article 335 of the Constitutio
mandates that the "claims of the members of the Scheduled Cast
and Scheduled Tribes shall be taken into consideration, consisten
with the maintenance of efficiency of administration." Finally,
National Commission for Scheduled Castes and Scheduled Tribe
was created to investigate, monitor, advice, and evaluate t
progress of the Scheduled Castes and Scheduled Tribes under t
schemes aimed at the socio-economic development of these group
Another Commission was also created to investigate the conditio
of the socially and educationally backward classes. It is interesti
to note that reservations explicitly single out certain castes f
special preferential treatment. It also contradicts the Constitution
prohibition on discrimination based on caste, race, and other su
criteria. Furthermore, India's caste system itself, with its stri
hierarchy dictated by birth, is at odds with the ideals of equality a
social justice.

Reservations or quotas can be methods for promoting affirmati
action but are not affirmative action per se. Affirmative action
different from a reservation or quota in that it is open-ended a
without any fixed number. Yet all such devices aim at serving as
"corrective" for past governmental, social or individual bias again
women, certain individuals, groups or minorities based upon cas
class, creed, gender or ethnicity. The disadvantaged groups have oft
been subjected to unfair, derogatory or discriminatory treatme
for no fault of their own. The scope for affirmative action may
may not be provided for in the constitution itself but it is comm
to speak of "affirmative action" or "positive discrimination" in t
sense of providing justice to those who are ill-treated, discriminat
against or under-represented due to inherent socio-economic a
cultural traits or of preventing those in power from doing any furth
wrong to caste/class/creed-based minorities.

It was precisely the denial of social opportunities, sanctioned by law and custom, which pushed vast numbers of dalit-bahujans and adivasis into a life of penury, lacking both cultural and social capital. In order to bridge the gap, affirmative action was made constitutionally mandatory so as to enable the deprived populace to regain their dignity. Education, long regarded as a liberating and modernising force, formed an important part of the social justice campaign. But although the Indian welfare state recognises its moral obligation to guarantee every child an education, this is a dream that is still far from being realised. The first generation of learners from the marginalised communities must not only come to terms with an alien curriculum, they must also battle entrenched pedagogical prejudices. The debate on reservations in the public domain intensified when V. P. Singh announced the implementation of the Mandal Commission Report in 1989. It lead to widespread protests and renewed the debate on caste based reservations and its efficacy.

Merit and the Language of Hate

As observed by Uma Chakravarti, at the height of the anti-Mandal agitation in Delhi, newspapers carried photographs showing women college students in Delhi demonstrating in the streets. They were carrying placards that read 'We don't want unemployed husbands'![4] Women students protested not for themselves but on behalf of their potential husbands. In Lucknow, medicos and other students were polishing shoes and cleaning cars and taking out processions in which they ply rickshaws - to make the point that this is what they are likely to end up doing if the Government reserves more jobs[5]. Such prejudiced expressions in the public domain reflect the sense of entitlement embedded amongst the upper caste 'meritocracy' who are unwilling to relinquish their hold on intellectual resources. This has prevented the implementation of reservations and there is negligible representation of dalit-bahujans in academia. Till date, the 200 point roster model was utilized by the UGC/MHRD to ensure fair representation such as 27% for OBCs at entry level (Assistant Professors), 15% for SCs and 7.5% for STs at all levels. In an RTI response, the UGC furnished the following data as on 30th June 2016 for faculty positions in all Central Universities, across all categories as per the 200 point roster.

Grand Total (NON-NER CUs+NEW CUs+NER CUs)	Statement of Teaching staff strength (Category wise as on 30.06.2016 in Central Universities					
	No. of Vacant Posts					
Prof.	895	238	117	0	34	1284
Associate Prof.	1396	448	254	0	87	2185
Assistant Prof.	950	377	219	861	107	2514
Total No.	3241	1063	590	861	228	5983

If fairly implemented, this would ensure that out of 200 posts, 9 will go to SC, ST and OBC and 101 will be left for general catego However, this seldom happened and the Allahabad High Cour found this system faulty and ordered for reservations to be appli department wise. Hence, the 13 point roster was reintroduced. Th would prevent any SC/ST/OBC candidates from nursing academ and employment ambitions. If the department is considered as a un in smaller departments with less than seven seats, departments wi specialized categories like Indian History, European History, Mediev Modern, Ancient History etc, specialized area studies programs, cha etc the doors are shut for dalit-bahujans. However, in all its wisdo the court failed to mention anything about the existing backlog faculty recruitment and how this issue will be addressed.

The fine print of the Allahabad Court judgment7 requests the UG to deliberate over the subject with the MHRD and then decide t course of action. On the contrary, the UGC sought to impleme the decision and many universities like BHU and Central Universit of Punjab (CUP) and Tamil Nadu came out with notifications f faculty recruitments. The CUP advertised on 1st July 2018 (Ad No. CUPB/18-19/003), for 57 positions in different departments f all positions. All 15 Professors and 25 Associate Professors and Assistant Professors are unreserved. There are only two positio for OBCs and 3 for PWD at entry level. In Central University of Tar Nadu, (Advt No 04/2018, dated 14/06/2018) out of 39 positio advertised at various levels, all are for unreserved category. The are two PWD positions under the same category. The Cent University of Rajasthan, (Advt No, CURAJ/R/F.99/2018/761, dat 25th May 2018), advertised for 33 positions at various levels and are unreserved in different departments. In the same category, tw positions are reserved for PWDs.

BY NEW ROSTER SYSTEM

More than 90% of reserved vacancies in 6 out of 9 universities will be converted into unreserved vacancies

University	Adverted Vacancies	Old Formula (200 point Roster)				New Formula (Department wise Roster)				Loss of Reserved vacancies	Percentage of reserved seats Convereted to UR
		UR	OBC	SC	ST	UR	OBC	SC	ST		
Rajasthan Central University	33	16	9	5	3	13	0	0	0	17	100
Sampurnanand Sanskrit University	99	51	26	15	8	79	13	7	0	28	59
Banaras Hindu University	60	31	15	9	5	52	8	3	0	21	62
Atal Bihari Vajpayee Hindi University	18	11	4	2	1	18	0	0	0	7	100
Haryana Central University	80	41	21	12	6	80	0	0	0	39	100
Tamil Nadu Central University	65	33	18	9	5	63	1	0	0	30	94
Punjab Central University	58	29	15	9	5	51	2	0	0	22	93
Jharkhand Central University	63	32	16	10	5	58	4	1	0	26	84
Indra Gandhi National Tribal University	52	32	12	6	2	51	1	0	0	19	95

Data Source: Advertisement of various Universities, Indian Express

Unraveling Modinomics

Ideologically, the RSS-BJP government is against any notion of reservations as it invalidates their metanarrative of 'Hindu brotherhood'. If they acquiesce to reservations, they need to admit the existence of caste, which is akin to committing political hara-kiri. Akhand Bharat and Mandal are antithesis to each other. The past few years have witnessed repeated agitations by Patidars, Jats, Marathas and Kapus. In order to satisfy them, the government announced 10% for the economically weaker sections among the upper castes. This policy is riddled with contradictions. In the absence of a caste census, how is the weaker section enumerated? Any person with a land holding of one acre is worth lakhs if not crores in urban areas. As per the income tax ceiling in India, if your income is two and a half lakhs per annum, you need to pay your taxes. How does one justify then that an income of eight lakhs per

annum makes one economically poor? Even an assistant professor any state or central university does not earn eight lakhs per annu The same income is the creamy layer slab for OBCs. How does o rationalize Modinomics?

Such desperate measures violate the constitutional provisions f reservations as representation under Articles 15 and 16. When th Women's Reservation Bill and Reservation in the Private Sector Bi are pending for ages in Parliament, within 48 hours, the 10% quo was rushed through both Houses of Parliament. Is it to appease th upper castes post the defeat in the recent state elections? Wi unseemly haste, UGC and MHRD rushed to implement the fres orders from the current academic year. This begs the question, wh about the backlog vacancies in the SC/ST and OBC positions whic are yet to be calculated and filled. The brahmanical institutions we never interested in filling up these posts. Clearly the powers that b have goofed up their math.

On 29th January 2019, the Honourable Prime Minister pontificate on exam stress via 'Pareeksha Pe Charcha'. Who will alleviate th stress experienced by this nation through the midnight robbery demonetization, RBI and CBI crisis, mob lynching, citizenship woe widespread misogyny and hatred? When will 'naukri pe charch happen? To illustrate, there are around 5000 adhoc, temporar guest teachers in Delhi University and constituent colleges. Som of them have been teaching for decades. Their positions were fille as per the 200 point roster. If the 13 point roster is implemented Delhi University, 90 % of them will be jobless. Maybe they shou turn self employed by selling 'pakodas' after working hard to achiev PhDs, NET/JRF and years of teaching and research experience. For change, listen to their 'mann ki baat'.

Gandhi observed that his mission in life is to wipe every tear fro every eye. Nehru in his 'Tryst with Destiny' said that the "Th ambition of the greatest men of our generation has been to wip every tear from every eye. That may be beyond us, but as long there are tears and suffering, so long our work will not be over." F the descendents of Golwalkar and Savarkar, please remember Ambedkar said, you cannot make history if you forget history.

Notes

1. The Constitution defines the "State" as the "Government and Parliament of India and the Government and the Legislature of each of the States"
2. The draft constitution, produced by the Constituent Assembly's Drafting Committee headed by B.R. Ambedkar, included Muslims and Indian Christians among the beneficiaries of reservations in legislatures
3. In 1990, a five-member commission replaced the Officer for Scheduled Castes and Scheduled Tribes
4. Chakravarti, Uma. Gendering Caste Through Feminist Lens, Stree, 2006, p.3.
5. Naqvi Bhaumik, Saba. "Decision to implement Mandal Commission report stirs up protests across India", India Today, September 30, 1990. Available at: *https://www.indiatoday.in/magazine/special-report/story/19900930-decision-to-implement-mandal-commission-report-stirs-up-protests-across-india-813545-1990-09-30*. Accessed 17th Jan 2019, 10.40 pm.
6. SLP(C) Diary No. 14318/2018, Supreme Court of India, Record of Proceedings, Section XI.
7. Court No 37, Writ-A No-43260 of 2016, Allahabad High Court Judgment Copy, 7/4/2017.

EWS RESERVATION SUBVERTS REPRESENTATION OF UNREPRESENTED AS SOUGHT BY BABASAHEB

Pradeep Dhobley

*(Transcript of his speech at the 'Discussion on the Constitutionality an Progressiveness of the EWS Quota for the so-called Upper Castes an the Repercussions for the SC/ST/OBC/Pasmanda Representation' hel on 25th of Feb, 2019 at the Mumbai Marathi Patrakar Sangh, For Mumbai. Transcribed by **Vinay Shende**.)*

Our esteemed speaker Dr. Suresh Mane has already given a lot o material on this subject. I would like to add on to it or if some cue come to my mind, I will raise that. Suresh Mane is in the legal fiel as well as the political field. So whatever I say, you can always kee his comments with you, him being an experienced person. But fe of the things regarding the economically weaker sections(EWS), h has said that that class doesn't exist. But they have defined in th Constitution, or in that amendment, that those economic weake sections are also the caste. They are the non SC, non ST and no OBC. India is a country where there is nobody without caste. S the 10% will not be given to the SC, it won't be given to the ST, an not to the OBC. So it means remaining are also the Caste. So it applicable to some caste. And that caste whose annual income less than Eight Lakh Rupees.

As Mr. Mane has said that Reservation is not a gimmick which ca bring the votes in India. But if it would have been, then why woul they have come up with a 10 percent Reservation? Because it bring the votes. Reservation may not bring the jobs, but reservation bring the votes, that I want to tell you. Now this Government (BJP gov has failed in giving 2 crores of jobs to the youth. All are depresse In Maharashtra, the Maratha community youth think that they hav not got the jobs because they are not under Reservation. So the

feel "If I go under Reservation, I will get a job". This is a myth they have created. And under that myth only, lakhs of people (4-5 lakhs), around 32 morchas were there actually in Maharashtra. It is a Limca record for Reservation.

Even for the OBCs, they will be told that you don't get the jobs because SC/ST get the job. So then they made OBCs the enemies of SC/ST. Because here the myth runs. There is a propagandist, strategist. They make the mind of the people, they make the groups and they make the people in the groups fight with each other. Now for the section below Brahmins and above SC/ST/OBC – they are getting satisfied with this myth. Arey aap logon ko reservation mil gaya na toh aap logon ko bhi job milenge (If you get Reservation benefits, you will also get the jobs). So again to form the groups and these groups help them to get the votes.

You take the example of the Dhangars of Maharashtra. They were earlier fooled by Congress. And today being fooled by the BJP. Are Dhangars not getting reservation? Dhangars are getting reservation but they are being told, they are not getting jobs because you are in OBC. So you go for ST and you will get a job. So hundreds and thousands of youth of Dhangar community are having that myth. They think that "agar mujhe ST mein mil jayega toh mujhe job milega"(if I am classified as an ST, I will get a job). Jobs aren't there but reservations will land you a job, this myth has been created and saying if you don't get in OBC, you will get in ST. This has a lot of Politics. Last time, the Maharashtra CM had gone to the Dhangars saying that I will give you reservation under ST. And Dhangars have voted. Mahadev Jankar is the leader of that particular group.

They said, Marathas, we will give you reservation. They gave it to the Marathas. Now it is up to the court to say whether that is acceptable or not acceptable. Being a politician, I have played my role. I (the politician) will always say I have given you the reservation. If the court doesn't pass it, then what am I supposed to do? I am helpless. But at the time of the election, they are going to bring the votes and that is why they are playing this type of games and tricks.

The basic purpose of reservation by Dr. Babasaheb Ambedkar was to give representation to the non-represented people. That is gone now actually. And this particular logic that "No, even in Brahmins or in Upper Castes, don't they have poor people? Does only SC/ST/OBC have poor people? Shouldn't we give them Reservation?"

Except in Maharashtra, which is the land of Phule, Shahu, Ambedka and Tamil Nadu (land of Periyar), when I visit other states I see that is simply accepted by the SC/ST/OBCs also. They say "yes man, ther are poor Brahmins also ". It has become the often repeated story tha in a village there used to live a poor Brahmin. Only one Member o Parliament, from Rashtriya Janata Dal (RJD) who has said that "Sinc our childhood, we have been hearing this tale that in a village live a poor Brahmin. Why is the poor only always a Brahmin? Becaus there need not be a story written about others, because SC/ST/OB are anyways poor. Why write their "stories"?" They have alread been called Daridra Narayan. Daridra (poor) as well as Narayan. Bu one Brahmin who is poor, that story they have run continuously. S they run this discourse that you (SC/ST/OBCs) are getting, so let' give them (Brahmins) also. This is how they have made the 10% EW acceptable. As Dr. Suresh Mane said, the Samajwadi Party which i supposed to represent the OBCs or Mayawati, who is an eminen Bahujan leader, particularly a Scheduled Caste Leader, is also force to vote for that.

We know that they understand but leaders have to take decisio seeing the election. And if they aren't able to explain, many poo people may not vote for them. But there are some people like MI leader Owaisi who said in the parliament that this is an insult o Dr. Babasaheb Ambedkar's Constitution. He was vocal in sayin that. RJD MP also opposed, so did Tejaswi Yadav of RJD, who sai "Savarnon ko 10 percent, pichdey leke rahenge 90 percent (Savarna can have 10%, we backwards will take 90%)". So at least he sai something on that. Now, not in the parliament but afterwards in th South, DMK has come out openly. Stalin had a Dharna against thi EWS reservation. He said we oppose this 10% reservation. Ther are Petitions in the Supreme Court. I am the secretary of All Indi Federation of OBC Employees Welfare Associations. So from ou Association also we have put a petition in the Supreme Court. Ou General Secretary Karunanidhi has taken the initiative and th petition is there.

So their argument comes like, "Aren't there poor among Brahmins? "Whether reservation is for stomach feeding?, Or is it for Soci Representation?" that should be your question. Entire Constitution base is reservation. The entire freedom fight stands for reservation representation. Britishers were better representing Indians than w Indian people. But then why the freedom? Because we, the India

people have to represent our country. It is a matter of representation. Then what about after freedom, the representation of those people who because of thousands of years of disability could not come and sit on the chair, and hence the reservation. Reservation is equivalent to the freedom of the SC/ST/OBCs. We can't take it as a political gimmick or something like that. We might be just a few people sitting here but we are the volunteers who carry forward Dr. Babasaheb Ambedkar's spirit which he has imbibed in the Constitution that reservation is representation and representation is freedom of these people. Otherwise, we will remain as slaves. So whatever are the odds, we must argue in society.

If they say it is for stomach feeding, our argument should be that there might be some poor ones and so they should have reservation in Class 4 jobs. There are jobs of sweeper, helper, cleaner, safai kaamgar. Give them (upper castes) 10% reservation there. This will help achieve 2 objectives. First, those who don't have a broom in their hands will have a broom in their hands and it will also answer their argument that this is being done to remove your poverty. We have to state in the Supreme Court that this particular reservation is not with the intent to get Safai Kaamgar jobs. They intend to become a collector and commissioner and get in educational institutions to become doctors and engineers.

Today's figures tell that in spite of 50% Reservation for SC/ST/OBCs, 65-75% of Class 1 positions, IAS/IPS positions, are still with Brahmins and other Upper Castes. Now if they get this 10% "EWS" reservation it will become 75-80%. That means for people who are already represented, their representation has been further increased. And in how many days? In just 3 days. Article 340 was written in Indian Constitution. How many years did it take to implement that? Almost 40 years from 1950 to 1990. Even after that creamy layer condition was put. For SC/ST reservation that was given due to Constitution, Babasaheb had to do a conference with Britishers in Round Table Conference. He had to tell about the struggles, pains of thousands of years, told about the slavery. To compensate for thousands of years of slavery, in 1950 in the Constitution it was added after a big battle was fought for that. If we were slaves of Britishers and if Gandhi was also a slave of Britishers, then the Act that would have been a British-Gandhi Act or British-Ambedkar Act. But we got the Gandhi-Ambedkar pact. Because in this country leaders of two communities make a pact between themselves, before

independence, saying this is our pact and we need representation That it makes a joint electorate instead of a separate electorate a different matter altogether and we won't go into that, but that when representation started.

Nowadays the consumers of reservations are reducing. Why are the reducing? Because the area of reservations is decreasing. Becaus all the Government sectors are getting privatized. So the time ha come where we should say there should be reservations in th private sector also. Roads, electricity, land- all these resources use by capitalists is from this country only. Even raw material. So ther should be reservation there also. Last week, I was at Ranchi an the one demand of the people was that OBCs should be given 27% Reservation. I was to talk there that OBCs are 52%, so they should ge 52% reservation. But they said that the masses have come. Aroun fifty thousand people had gathered in the Vidhan Sabha Ground. was called to speak. Sudesh Kumar Mahto, the ex-Deputy CM o Jharkhand, had called me. R L Chandapuri, who is recognized as th Ambedkar of Bihar, his son had that rally. Everyone was wearin a cap that we should get 27% Reservation. But Why? People ha come in thousands and they were on the street. They are comin for Reservation. They said 10% Reservation has been given to th Upper Caste, so we should be given 27% Reservation. Because 27% is an official figure as per the Mandal Commission. We'll not go int the more logical end of 52% but this 27% is prevailing. But Sudes Kumar Mahto told me there are some districts in Jharkhand wher OBCs have Zero percent reservation. About 12-13 districts. Yo know how the 27% reservation is given to the OBC? Because as D Mane has said there is a ceiling of 50%. So in India, as per population SC is 15%, ST is 7.5%, and then fifty minus twenty two point five i 27% reservation to the OBCs. SC/ST should be given as per thei population. Then whatever is remaining in fifty is being given to th OBCs. A similar case we have in Maharashtra in Nandurbar district 6% to the OBCs there. Same is the case of Gadchiroli district.

So in Jharkhand there are twelve or thirteen districts where SC+S population exceeds fifty percent. So automatically if SC+ST consume 50 percent nothing is left for the OBC. So if we see this 10 percen reservation, at least in such districts , because reservation is normall given at 3 levels - Central, State and District level (Zilla Parisha teachers, officials, etc. have reservation). So if 10% reservation implemented there, what it means is that on the top SC/ST will get a

per their population, non SC/ST/OBC who are below eight lakhs per annum, they will also get 10 percent, but those OBCs who fall below eight lakhs will not get reservation. So tomorrow an OBC says that my income is below eight lakhs and give me the 10% EWS reservation, he won't get that because his certificate would be of OBC. Since you have called me as an OBC Seva Sangh President, hence I am highlighting that point. Because this point you can take to the court.

So it means the OBCs have got NIL representation now with this arrangement. And what Dr.Mane said about the limit, that rupees eight lakh and below is defined as "poor" in the country whereas rupees five lakh and above are taxable people. So those who are taxed in India are those with annual income more than five lakhs but this EWS says those who have income less than eight lakhs are poor! So what is going on?

Regarding the different commissions - the National Commission for Backward Classes, it was constituted due to the Mandal Commission and now they have given the Constitutional Status in the month of August 2018. But what about the appointment of the Chairman of this National Commission? They have not appointed a Chairman. So overall this Government strategy is that they are going against the spirit of the reservation which means against the spirit of the Constitution. So we are required to educate our people. Unless we educate the people, that they have played the role of endangering the Constitution, they have touched the spirit of the Constitution. If we don't understand it at this point, it will be very late. Regarding the judicial culture also, Dr. Suresh Mane said that Judiciary may or may not accept. But they have made the Constitutional amendment, judiciary has not given the stay, which means judiciary wants to listen. So when he says that 50 percent ceiling can't be overcome but that may be the 9 judge bench judgement. But if you weight the 9 judge bench and the amendment of the Constitution, the amendment of the Constitution weighs higher because it is from both houses that represent the voice of the Indian people. We are a sovereign country. So it is like 125 crores of people are saying that 10% reservation is ok and they have made the amendment in the Constitution. So I think unless something very special comes up, that it is endangering the spirit of the Constitution, it is very difficult to remove this. If it is removed it will be the first of its type in the Indian history that some amendment has been repealed. Let's hope it will happen. Thank you very much.

THE GENERAL CATEGORY IS THE SEAT OF CASTE, NO THE RESERVED CATEGORIES

Naren Bedide (Kuffir)

This article was written in the year 2012.

Pratap Bhanu Mehta wants to break down the 'tyranny of compulso identities'1. Shouldn't reservations be the last place to begin ther Reservations happen when the state finally decides to pay attentio to what caste has done to a lower caste individual. A whole li precedes it: a life spent facing and struggling against, in varyi degrees, many structural efforts to incapacitate that individua Shouldn't we begin at the beginning, then? From the 'scandalou failure to prepare the preconditions for advancement'?

What are these preconditions? Mehta mentions: 'Access to prima education to access to public goods, financial support, and a robust growing economy that provides opportunities for mobility'.

Ignoring the superciliousness in Mehta's tone which seems indicate the implicit belief that Dalits or other backward sections Indian society have never seriously considered or agitated for th resolution of those issues, you will probably admit: how can the be any disagreement on all those issues? But how do we get the from here? It's quite clear it is very difficult to get there from her because we haven't got there in the last 65 years. But the ruli classes, as represented by people like Mehta, should understan that a major reason why we are still stuck here, still discussi reservations, the symptoms, is probably because they have nev paid as much serious attention to, or expended as much passion i discussing causes as they have deprecating reservations. We're st here, because the ruling classes most probably like it here.

Reservations are still here because the conditions which crea

the compulsory identities are still here. And what sustains those conditions? Following Mehta's train of thought, we could say the answer is: the lack of opportunities. And what causes that shortage of opportunities? One reason could be the inability to create them. Another less obvious reason could be the unwillingness to create them.

Let's explore the less obvious reason first. The ruling classes have from the very beginning stood by the ideology of merit. Remember, Nehru wanted to build a 'first class country in everything'2. You can't create opportunities for all when you swear by the exclusivity inherent in the ideal of merit, can you? This is a contradiction that champions of merit like Mehta can never see.

So when he talks about 'access to primary education' does he really understand, how the ideology of merit subverts that idea? That a caste system of varyingly 'meritorious' schools doesn't ensure equal, or equitable, access to primary education to all? Shouldn't Mehta have written this 'Dear Dalits' article when the RTE Bill was being debated rather than now, when the quota in promotions is being mooted? Why are you so in love with the symptoms, Mr. Mehta? But such has been the sincerity of reservation baiters for a long, long time. If they had been truly committed to the causes they boisterously espouse they would have started looking at the design of the education system in India first. A comment by a popular blogger turned novelist, on the social media, seems to illustrate clearly the narrowness of the thinking of these reservation baiters:

The demand for reservations in promotions after 60 years of reservations in educational institutions and jobs is proof that reservations have failed.

He seems, like Mehta, to be another symptom lover again, disguised again as a lover of causes. All kinds of media, right from those driven by satellites to those catalysed by water coolers, are full of such profound anti-reservations wisdom. But he is right in recognizing that something has failed, and thankfully, is also much less sanctimonious than Mehta in expressing his views. What has failed? Reservations?

If the education system, even after 60 years, can accommodate students from reserved categories *only under compulsion* it clearly means the education system has failed. A system which seems to produce only largely 'unmeritorious' lower castes against largely 'meritorious' upper castes: *isn't something wrong with that system?*

Any objective outsider would consider such a system deeply flawe
at best, or intentionally racist at worst. *To reiterate, reservations a
not a failure, the education system is.*

Our deeply flawed education system didn't grow out of nowher
it grew out of a deeply flawed society. Why don't you look at ou
society as a whole, Mr. Mehta, instead of harping on what happen
in the sphere of public employment which concerns less than or
per cent of India's population? Or in higher education in centr
universities, the exclusive club within a club, which concerns muc
less than even 0.1 per cent of people in India?

The question that naturally crops up, considering the tendenc
among the upper caste dominated middle classes and their shallo
intellectual leaders, to rile against reservations every time a yawnin
gap in representation is sought to be even partially filled by an eve
dilatory state: are the ruling classes truly prepared, and willing, t
create more opportunities for all? Even in areas where shortage
have been eliminated-- like in undergraduate medical, business an
engineering colleges where many seats are going a-begging-- you
find deep resentment against reservations and students from th
reserved categories. Why?

According to random news stories in the Manustream media itsel
around 3 lakh engineering seats remained unfilled in the countr
last year (in 2011). For the last few years, tens of thousands o
engineering seats are going unfilled in just the three southern state
of Andhra Pradesh, Karnataka and Tamil Nadu, and now this year, th
figure would be more than a couple of lakhs. Seats remain unfilled i
Maharashtra, and in Uttar Pradesh, and across India. There are man
medical seats that remain unfilled too. A similar situation exists i
institutions offering other popular courses in law, business etc.

So the first reason, inability to create more opportunities, can
be a cause of 'lack of opportunities', at least in the field of highe
education. There are enough opportunities for everyone and more
but why do we still hear such virulent and very loud complaint
against reservations in our public sphere? It's not just a few 'publi
intellectuals like Pratap Bhanu Mehta who seem to have mad
successful careers out of reservation baiting, there seem to be
whole range of social, voluntary organizations that seem to thriv
entirely on agendas which, directly or indirectly, oppose reservation
The Hazare-Kejriwal movement is a prime example.

This is the reality: in higher education, India has moved beyond the era of shortages, but the Pratap Bhanu Mehtas of the 'merit-excellence' business still seem to be stuck in it. They don't want students from the reserved categories in higher education even when there are more than enough, much more than enough, seats in higher education. This paradox can't be explained through logic, because this antipathy seems to be founded on purely emotional grounds. This opposition is founded on hatred, it'd seem.

What does Pratap Bhanu Mehta really want? He wants 'alternative paradigms' other than caste based reservations to be considered. Why? To build a sense of 'common citizenship'. His worry is 'we are also about to do that to the state', by which he means we're infusing caste into the state.

Perhaps he did write, talk about these ideas before 2006, but one gets the idea that it was the second phase of Mandal reservations introduced during that period which provoked him to think more on the issue. Was the state clean until then?

If there were no reservations, he would perhaps have not thought so hard on caste and citizenship. Reservations have forced him to compulsorily think about caste. Doesn't that make reservation itself an effective alternative paradigm?

Alternative paradigms, but same location

But how does he plan to create alternative paradigms? That's not always clear from what he says in this article or from his earlier writing, despite his obvious interest in the subject of reservations. But one key point can be deduced: even though he says he doesn't share the grounds on which many of the arguments against caste based reservations are made-- 'unthinking usage of an abstract idea of merit'-- he makes all his arguments from the vantage point of merit. He's not thinking of any 'alternative paradigms' away from that location.

This perpective binds him to a very hypocritical stance: while he talks about de-casteing our 'modern secular institutions', he doesn't talk about lessening the tendency of those institutions to embrace and favour upper caste elites. He isn't talking about puncturing the disproportionate sense of entitlement that the instrument of merit infuses into the privileged communities, only about how the Dalit-Bahujans shouldn't make any claims on the basis of their

disprivileged, 'compulsory' caste identities.

Commenting on the Supreme Court judgement which finally okay the second phase of Mandal reservations a few years ago, Meh said:

The court has, in deference to the legislature but in line with its ov precedent, upheld reservations. It has upheld the constitutional of the 93rd Amendment and 27 per cent quota for OBCs. But it in modest ways forcing the government to rationalise the system at least two ways: the exclusion of the creamy layer from the OB quota and an injunction that the inclusion of specific groups reviewed every five years. The rationalisation imposed is modest.

That's probably one issue that probably bothers Mehta a lot: t creamy layer. One can assume Mehta prefers rationalisation too, th he approves of the skimming of the creamy layer. But why shou any student who wishes to study further be denied the chance to so? The popular logic runs thus: only the truly needy and deservi should avail of reservations. The well off should be excluded.

Mehta obviously believes, like many others, that a lot of rich aspiran from the reserved categories corner all the reservation benefits. I also believes, while writing on the quota for minorities, 'particu castes in the categories of SC and OBC have disproportionate benefited from reservation'.

Creamy layer individuals and creamy layer castes. His 'alternati paradigms' should resolve those two issues, perhaps? All alternati paradigms suggested in the past, including the 'deprivation inde method promoted by Yogendra Yadav, have necessarily focuss on assuaging those two major anxieties of upper caste opponen of reservations and so-called defenders, upper caste again, 'affirmative action'. *Alternative* paradigms?

But there isn't any substantive evidence that only rich aspiran and a few castes across categories are grabbing all the benefits reservations. Those are at best assumptions, especially the first, a not even very intelligent ones at that. Can we build any alternat paradigm on the basis of such assumptions? You definitely cann build any alternative paradigm based on the prejudice on wh those assumptions are predicated.

Let's skim the upper caste creamy layer

Let's look at the first assumption first: it's impossible to convince

upper castes of India that only rich, lazy, incompetent and untalented people among the reserved categories, the so called 'creamy layer' in other words, are not eating away all the seats and jobs offered through quotas. Are only rich, lazy, incompetent and untalented people among the upper castes grabbing all the 'general category' seats and jobs offered?

That question would seem absurd to most upper caste opponents of reservations. Why? Because they obviously believe no one can succeed without hard work and merit. But why do they think the success of the reserved category students or applicants is not because of hard work and merit? Because *they know* they're rich, lazy, incompetent and untalented.

That kind of reasoning would be universally recognized as racism; but no, not in India. Therefore, the Dronacharyas in Delhi University4, for instance, think nothing of stealing thousands of reserved seats every year, and admitting many more thousands of upper caste students than sanctioned by the government. And you can be quite sure they are quite proud of doing that, as proud as Oskar Schindler must have been adding more and more condemned people (to be rescued) to his list, except the people being 'rescued' here are from the classes which do the condemning, mostly.

Let's ignore 'lazy, incompetent and untalented' for the moment: but *are none of the people in the general category lists rich?*

Their parents and grandparents and their parents and grandparents etc have been 'meritorious' through generations without making any money? That couldn't be true. Why would they continue to strive so hard to prove their merit, generation after generation, to grab the best educational opportunities and jobs if they were not going to make some money from it? Why go through all that hard work for nothing?

It is reasonable to assume at least some of them must be rich, even if not all of them like the successful quota grabbers from the reserved categories. *Let's skim that creamy layer.*

But many among the upper castes might object to that. How can meritorious students from the 'general category' be skimmed? Well, how can meritorious students from reserved categories be skimmed? If the rule is that only rich students corner all reserved seats, then it is very reasonable to assume that only rich students corner all the

general category seats too.

Let only poor candidates from all categories get all the opportunitie
If it makes good sense to skim rich aspirants from the reserve
categories in order to benefit the truly poor and marginalized, the
it makes much better sense to skim them from the general catego
because there are quite possibly more rich aspirants there. Wh
Because more marks mean richer candidates, right? And as all
the candidates in the general category score more marks than th
creamy layer of rich aspirants in the reserved categories, they mu
all very obviously be richer than the former creamy layer.

If this proposition militates against the fine sensibilities of peop
who worship merit they should think about all the poor, needy, ve
deserving upper caste aspirants who are deprived of opportunitie
because of those rich, meritorious freeloaders.

The second assumption-- *particular castes in the categories of SC ar
OBC have disproportionately benefited from reservation*-- is quite iron
really. Because reservations came about because a few, particul
castes were hogging all the opportunities; and those few, particul
castes still continue to hog most of the general category seats, on a
average, and also steal seats from the reserved categories in hug
numbers, wherever possible.

But Mehta isn't going to talk about that. In his view, only th
reserved category is tainted by the impurity of caste. When he talk
of cleansing our 'modern, secular institutions' of caste, he mean
only those parts of those institutions which have been unwise
thrown open to accommodate the lower castes to whatever exten

In other words, he has no issues with how the 'general category'
constructed, how it has been monopolized by a few castes for th
last couple of centuries, ever since the British first admitted the
into their institutions by reserving some seats for them, becaus
they were too unmeritorious to get in otherwise. When the 'gener
category' has such a long history of caste, Mehta doesn't spare eve
a brief glance at it. How modern and secular is his conception of o
modern, secular institutions?

Caste has been stifling the egalitarian potential of our mode
secular institutions even since they came into existence, and th
introduction of reservation itself, as pointed out in the beginnin
should be considered as the exploring of an alternative paradig

How can tinkering exclusively with reservations, while ignoring the flawed nature of the 'general category' or merit, be considered as a solution to rid our institutions of caste?

If anything frees these institutions of the stagnant miasma of caste to some extent, breathes some refreshing air of modern ideas like egalitarianism and diversity into them, it is the system of reservations. *The general category is the seat of caste, not the reserved categories.*

Notes

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2. Nehru, Jawaharlal. Letters to chief ministers 1947-1964, Volume 5, *Oxford University Press*, 1989, PP 456-7.
3. Mehta, Pratap Bhanu. 'It's a landmark', *The Indian Express*, April 11, 2008.
4. Academic Forum for Social Justice, 'Mockery of Reservation at the University of Delhi', *Round Table India*, August 8, 2012. Available at: https://roundtableindia.co.in/index.php?option=com_content&view=article&id=5535:mockery-of-reservation-at-the-university-of-delhi&catid=119:feature&Itemid=132

THE COST OF A POOR BRAHMIN: NOTES FROM HISTORY

Nidhin Shobhana

E.A.H Blunt in his book *The Caste System of Northern India spen* an entire chapter on how castes governed themselves in everyd lives. Based on the U.P. Census Report of 1911, he describes t functions and forms of punishments instituted by *jaati* panchaya Blunt points out that feeding the brahmin or paying him a fine gifting him a calf were common forms of punishments among no brahmins. For example, if your wife has a bad reputation - fe a brahmin; if you are a cow-killer - gift a calf to a brahmin; if y have disgraced your caste by begging - pay the brahmin a fine; you have killed a dog or a cat - take a bath in the Ganges and fe a few brahmins; if you have breached commensal laws - feed yo brethren and the brahmins.[1] The seeming disjuncture between t 'crime' and the 'punishment' can be resolved once we recognize h central the brahmin, the priestly governing class, has been to t everyday practice of castes and Hinduism.

The question of practice is significant as it would save us from simp conceptualizing 'brahmin' as a suspended structural abstraction. T maintenance and reproduction of a concrete, tangible social gro called 'brahmins' is essential for the ideological persistence a dynamism of brahmanism. Thus, brahmin and brahmanism cann be separated. Anu Ramdas in her paper clarifies how the brahm and his myths of 'self-racialization' and racialization of others the fuel that sustains the edifice of the caste system. She argu that racialized myths are essential for all supremacist ideologi The brahmin emerges not only as the most 'unpunished ent but also as the 'most protected entity' in the caste system.

xample, one is reminded of the British Governor's desperate letter to his army on 17th January 1809 to provide war-time immunity to Brahmin settlements and their religious establishments in Travancore.[2] Ramdas points out that protecting the most powerful is crucial for the continuation of any system (let be the king or the brahmin). The caste society is actively socialized through codified religious sanctions and modern state-sanctions to provide a net of 'systemic protection to the brahmin'. This, in turn, makes every mundane use of the term brahmin 'openly and fully complicit with the knowledge of its supremacist essence.'[3]

Our society as a whole is deeply invested in producing and reproducing the 'Brahmin' both as an idea and as a ruling class. At an objective level, the productive classes, comprised of lower-castes socially produce and reproduce for everyone, including the non-productive ruling classes. Additionally, one also preserves the 'brahmin' in our religious and cultural realms through emotional and psychological investments. This 'psychological wage' of brahmanism, so to speak, cannot be separated from the objective conditions of caste-based production. They are deeply interlinked, like skin and bone, as Gramsci would suggest. Thus, when the epithet or adjective poor or deserving gets prefixed with 'Brahmin' or 'Savarna', it becomes a social anathema, a contradiction, an eyesore which should be rectified through collective, social investment. The same emotions do not bother us when we hear 'poor dalit' or 'poor farmer' or 'illiterate woman'. Ram Vilas Paswan's statement that a poor dalit would etch his survival through manual labour, but what will a poor brahmin do – should be evaluated in this light. The poor brahmin should be given scholarships, newborn calves, reservations, food, ghee, urban property, government jobs, GST-free janeau etc. The Minister's statement is neither new nor uncommon. Ernest Wood in his book 'An Englishman defends Mother India' makes a similar comment - "It would, of course, be perfectly silly for Brahmin students to take up manual labour when there are hundreds of millions of people who are already qualified for that, and generally speaking half of them are on the verge of starvation".[4]

We have a very long history of collective investments to alleviate the woes of the brahmin and his allies. This short piece would provide some illustrative examples of the same in the arena of higher

education.

The Story of Dakshina Fellowships

Narinder Kumar in his book tells us that *Dakshina* was instituted an official endowment for brahmins, most prominently during t Peshwa rule in western India.[5] He traces the details of this fellowsh in one of his chapters. Quoting from the Sanskrit Commissi Report of 1957, Kumar underlines that dakshina fellowships we established by Shivaji under the guidance of his brahmin gu Ramadas. It is said that Ramadas demanded three 'boons' from Shiv which included feasts and fellowships for Brahmins in the mon of Shravan. The term 'dakshina' which still informs a scholarsh scheme in Maharashtra (Government Dakshina Fellowship) has inseparable connection with the Brahmin class. The author, quoti from the educational records of Bombay government, furth writes that brahmins were provided scholarships in cash and ki depending upon their expertise. For example, a brahmin well-vers in ten books was given 'ten maunds of corn and one hundred rupee The fellowships which began in the second half of the 17th centu incurred an initial annual expenditure of 'five lakhs of rupees'. is during the Peshwas that the institution gained further stea became a state duty.

An elaborate panel of Brahmin scholars was invited from vario parts of the sub-continent - *'Kashi, Rameshwar, Telangar Dravidadesa, Konkan, Kanyakubja, Srirangapatta, Mathura, Gadhw Gurjar etc'*. This panel would camp for several days in Pune shortlist brahmins for the fellowship. The centrality of Pune w such that several permanent 'Sanskrit Pathshalas' emerged in around the place. Kumar writes that the example of the Peshw was followed up by various feudatories including the Shravan Dakshina fellowships of Baroda. Under the Peshwa rule, the ann expenditure on Dakshinas was never less than ten lakhs of rupees 1758, during Peshwa Bajirao, the amount peaked as high as rupe eighteen lakhs. Kumar observes that, at times, more than 60,0 brahmins received the fellowship in a year. In 1770 as many 40,000 appeared for the exam from brahmin centres in north a south. It needs to be emphasized that brahmins, as a nation, as imagined community that speaks a common language (Sanskrit)

shares common interests (such as the Dakshina) was being produced through the state-sponsored programmes and patronage of not just the Peshwas but also feudatories of Baroda, Darbhanga, Mysore, Vijayanagaram, Jaipur, Patiala, Jammu etc. Interestingly, independent India provides just 300 National OBC fellowships, 667 and 2000 ST and SC National fellowships annually.

Under the British, the institution was initially stalled only to be reinstated due to 'popular demand', with a cut-down of annual expenditure from five lakhs to fifty thousand rupees. Dakshina Fund was imagined as a compensatory step for brahmins after the occupation of Deccan in 1818.[6] The British also demanded a knowledge of new disciplines from the prospective fellows. Kumar gives us the details of the amounts thus distributed among brahmins-

Year	Amount	Number of Brahmanas
1839	Rs. 28,172	1991
1840	Rs. 27,134	1938
1841	Rs. 26,255	1860
1842	Rs. 24,584	1763
1843	Rs. 22,989	1710
1844	Rs. 23,101	1630
1845	Rs. 22,284	1579
1846	Rs. 21,730	1536
1847	Rs. 20,313	1435
1848	Rs. 19,638	1385
1849	Rs. 18,749	1337"[2]

(Source: Kumar, 1976:44)

It should be noted that Dakshina fellowships were permanently offered to many Brahmins. A portion of the fellowship was transferred for the upkeep of the Poona Sanskrit College after 1829. All native learning was imagined in Sanskrit exclusively by the Brahmins or the literary classes. This situation shifted only in the second half of the 19th century. After 1849, a sizeable amount of the Dakshina was channelized towards vernacular Marathi and it was theoretically thrown open to all castes and creeds. The institution of Dakshina,

as it was originally conceptualized came to an end by the late 19t century. It resurfaced again, in the form of Junior/Senior Dakshin Fellowships (Rs. 50/Rs.100 per month)[7] under the Colleges o Bombay University from the early 20th century. A specific numbe of seats were earmarked for specific colleges - six for Elphinston College, three for St. Wilson's College, three for Fergusson Colleg etc. Today the old ghost of Dakshina has been metamorphose as 'Government Dakshina Fellowship' which aims at 'meritorious students who do not avail any other scholarships.[8]

In annual calendars of universities and in memoirs, biographies o many popular upper-caste men and women one finds details o how they were 'Dakshina Fellows' in the past. Bombay Universit Calendars of the 19th century give us lists of Dakshina Fellow who, not surprisingly were largely Brahmins followed by Gujarat Vaisyas and Parsis. For example, Nandini Sundar's 'In the Cause o Anthropology: Life and Work of Irawati Karve' tells us how Irawat Karve was a Dakshina Fellow in the early 20th century.[9] Ramakrishn Bhandarkar after whom the Bhandarkar Oriental Institute in Pun gets its name was a Dakshina fellow in 1859.[10] Pherozeshah Meht and Byramji Naoroji Cama were Dakshina Fellows.[11] Govind Agarka was a Superintendent of Dakshina Fellowship in late 19th centur Pune.[12]

Brahmin-Savarna Funds in 20th Century

The Agra University Calendar of 1945-46 has an interesting sectio on hostels.[13] Out of the five recognized hostels, four were manage and inhabited by upper-caste Hindus. In fact, they were name after individual *jaatis* - Kayastha, Chaubey, Bhargava, and Vaish. Th Chaubey and Bhargava Hostels preferred Chaturvedi Brahmins an Bhargavas respectively, while the Kayastha Hostel was theoreticall open to all. The management of all the hostels rested firmly with th founding jaatis. The Kayastha Hostel received a heavy subsidy fro the U.P. Government for its construction, in the early 20th centur In 1945, the hostel warden was also the secretary of Agra's Kayasth Association. Thus, jaati-based hostels were not simply endorse but also economically subsidized by Universities and Governments These details are interesting and important because, in less than year after the publication of this calendar, a Constituent Assembl

with a reeking majority of upper-caste members would denounce communal representation and engineer themselves as casteless, meritorious individuals. University Calendars at least partially help us recognize their communal way to castelessness and 'merit'.

> Five Mess houses were constructed in the course of the first four years, one for the Brahmin Mess, another for the Nair Mess, a third for the cosmopolitan Vegetarian Mess and the remaining two for the Cosmopolitan Non-Vegetarian Messes. A Canteen was opened in a building crected for the purpose in June 1925

Details of Hostel Mess in Madras University Calendar

The Lucknow University annual calendars give us detailed accounts of caste-based monthly endowments. For example, Pandit Suraj Narain Scholarship exclusively preferred Kashmiri Brahmins. Bhinga Raj Kshattriya Scholarship was an endowment meant for students of pure Kshatriya race. The section providing details of this scholarship ends with a 'note well' that clarifies that self-proclaimed Kshatriyas such as Jats, Kayasthas and Khatris would not be considered. Raja Bahadur Dayal Scholarship in Lucknow University had a graded order of preference and priority - Khatris, Hindus other than Khatris and then others. One also finds numerous endowments particularly aimed at students in the Sanskrit Department. These endowments were granted by temple trusts (Sri Nageshwar Nath Temple Scholarship, Sri Mahavirji Temple Trust Scholarship etc.) and prominent upper-caste civil servants and zamindars.[14]

> 5. Only women students who have passed the Intermediate Examination of the Nagpur University with Science subjects shall be eligible for the award of the scholarship:
>
> Provided that every scholar shall be selected by the selection committee from among the applicants belonging to the communities mentioned below in the order in which they are mentioned.
>
> a. Maharashtra Brahmin community
> b. Any other Brahmin community
> c. Hindu community including depressed classes, and
> d. Any other community of Indian nationality.

Details of a Communal Scholarship from Nagpur University Calendar 1936-37

Banaras Hindu University Calendars of late 1930s,[15] yet agai provide details of caste-based scholarships, medals, and prize Looking at the list, one would realize that the foremost subject communal generosity and investment was clearly the 'poor an deserving brahmin student'. It should be noted that Non-brahmi dwijas were also invested in promoting Brahmin's scholarshi Donors often preferred students from specific *upajaatis* or sub castes for their endowments. Pandit Amar Nath Trust Scholarshi Rai Pandit Kishen Narain Gurtu Scholarship, Pandit Hari Krishn Scholarship preferred Kashmiri Pandits. Rai Sahib Chandi Prasa Scholarship, Lala Ratanchand Scholarship, Lala Murlidhar Kapoo Technical Scholarship, Rai Bahadur Babu Gokul Chand Scholarshi exclusively preferred poor, deserving Khatri students. Parvatiba Jain and Kumar Singh Scholarships targeted Jain students who too up Sanskrit as one of their subjects. Ratanchand Dalpatram Shal Scholarship preferred students in the following descending order Jain Shwetambar Murti pujak, Digambar Jain and then other Hindu who had Sanskrit as their subject. Pandit Lalta Prasad Chaturved Scholarship, Pandit Tulsiram Pathak Scholarship, Pandit Banwar Lal Sharma Scholarship, Hari Prasad Dube Scholarship, Rai Bahadu Pandit Kanhaiyalal Scholarship preferred different varieties o Brahmins - Kanyakubja, Gour, Nagar, Karad so on and so forth.

Certain scholarships had a meticulous system of exclusion. Fo example, Chaturvedi Haribhajan Scholarship primarily targete Kanyakubja Brahmins of Kalpi, next in order were the same variet of Brahmins from Jalaun, followed by U.P. of Agra and Oudh. Th recipient was supposed to have compulsorily passed Prathama o Praveshika exams of Benaras Sanskrit College. If Kanyakubjas wer not found from the aforementioned areas, the next in order wer Kanyakubjas irrespective of place of origin. It is only when thes options were exhausted that the scholarship was offered to an other Brahmin. One finds a similar system of selection for Mahabi Prasad Dwivedi Scholarship (for Kanyakubjas) and Maharaj Si Ghanshyam Singhji Scholarship for Jhala Rajputs. The Thanmal Sigti Scholarship for Marwadi Agarwals also had an additional demand o Brahmacharya and recital of Bhagavad Gita from the recipient durin the period of the endowment. BHU had exclusive scholarships fo Brahmin, Agarwal, Maheshwari and Khatri women. In other words

upper-caste women formed a separate category of communal investment. Scholarships were also bestowed on poor, deserving Bengali Brahmin boy (Ramachandra Mukherjee Scholarship), Odia Brahmin boy, kayastha graduate (Shankar Lakshmi Scholarship), Bisa Agarwal student (Basudeo Sahai Medal) etc. Endowments aiming poor, deserving Brahmins irrespective of *upajaati* or regional conditions were numerous and often masqueraded under the disciplines of Sanskrit, Oriental learning, theology, Advaita Philosophy etc. In the entire list, one finds just one scholarship aimed at a caste presently listed with OBC - Devi Basmato Koer Scholarship for a student from the Kalwar community. Additionally, we find a Giridhar Lal Batra Endowment to train '*dais*' from the depressed classes.

Similar jaati-endowments can be traced in Bombay University, Nagpur University, Madras University so on and so forth. Inherited material wealth or 'tangible gains' as Anu Ramdas puts it are crucial in economically preserving and reproducing the supremacist myth. Brahmin scholarships should not be understood as 'caste privileges.' Again, drawing from Ramdas, they are *inalienable rights* legitimized within the caste system. The dwija zamindar or civil servant's investments in sanskrit or brahmins should be seen as a spiritual act of penance, as a mode of salvation within brahminism. It is part of the caste design, not a privilege that can be snatched away.

Continued accumulation of wealth by brahmin and his allies and concerted, communal investment of this wealth in higher education to meet the demands of colonial modernity, ensured that a national class of brahmins and his friends would hegemonize post-colonial India. The ability to perpetually free one's offspring from physical labour to pursue higher learning continues to be the preserve of a small minority. The upper-crust of the caste society, which eagerly monopolized secure state employment in the initial decades of independence were capable of freeing their children for new forms of accumulation. Land exchanged hands, was converted into urban property, college degrees, PhDs and other such credential capitals. It is not surprising that most of the state academicians belong to this class often naively referred to as the Indian middle class. Take a look at these caste numbers from the 1931 Census Report (Vol.1, Chapter on Literacy), to get a better picture -

Literate in English per 10,000 of Population

Caste			Males	Female
Baidhya	-	-	5,279	1,373
Kayastha	-	-	2,418	293
Khatri	-	-	1,320	109
Brahman	-	-	1,073	86
Nayar	-	-	693	137
Lushei	-	-	160	9
Rajput	-	-	135	5
Vishwabrahman	-	-	86	4
Jat	-	-	70	3
Kunbi	-	-	69	2
Mali	-	-	53	2
Oraon	-	-	46	9
Teli	-	-	48	0.5
Momin	-	-	43	6
Parayan	-	-	25	3
Yadava	-	-	23	1
Mahar	-	-	15	0.8
Kumhar	-	-	16	0.5
Baloch	-	-	17	0.4
Dom	-	-	9	0.9
Bhangi	-	-	6	2
Gond	-	-	4	0.4
Chamar	-	-	3	0.3
Bhil	-	-	1	

Literate per mille

Caste or Tribe			Males	Female
Baidhya	-	-	782	486
Nayar	-	-	603	276
Kayastha	-	-	607	191
Khatri	-	-	451	126
Brahman	-	-	437	96

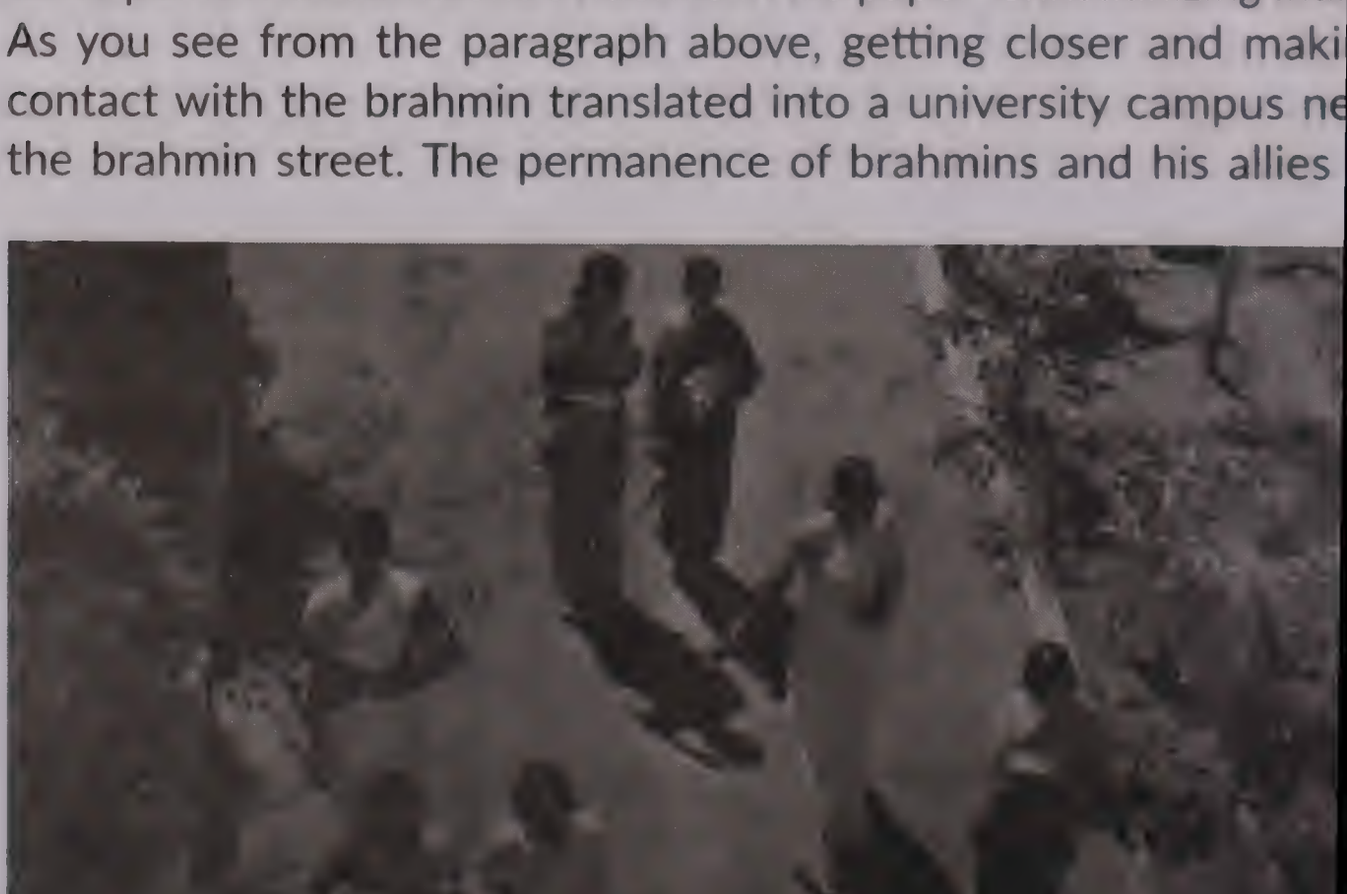
Lushei	-	-	260	31
Vishwabrahman	-	-	197	21
Rajput	-	-	153	13
Kurmi	-	-	126	12
Teli	-	-	114	6
Mali	-	-	80	4
Momin	-	-	59	8
Parayan	-	-	56	6
Jat	-	-	53	6
Mahar	-	-	44	4
Oraon	-	-	35	11
Yadava	-	-	39	2
Kumhar	-	-	35	4
Bhangi	-	-	19	2
Baloch	-	-	19	1
Dom	-	-	16	2
Gond	-	-	16	1
Bhil	-	-	11	1
Chamar	-	-	10	1

As you see, Baidhyas, Kayasthas, Nayars, Khatris, and Brahmins topped the list of both literacy and English literacy in 1931. We would not find any such table today, thanks to post-colonial decision-makers from these very castes. The British, for whatever reason, had the courage to compare castes and communities, irrespective of their place in the caste hierarchy. If we were to reimagine these tables today - we would have separate lists for OBCs, SCs, STs, and others. Clearly, the Vishwabrahman or Vishwakarma castes would be the 'dominant' English speakers (0.86%) among OBCs; while Mahars (0.15%) among SCs; Oroans (0.46%) among STs and the superior others would remain unnamed.

It should be noted that modern higher education always placed the 'poor, deserving' Brahmin and his entire lot as its central subject. This is clear from the accounts above and would be further clear if we go through Christian Mission archives. Take a look at this passage from a post-colonial mission account, *Christian India*[16] -

We must now return to Shiva's Holy City. Here the great temple, s
on its famous rock, dominates the uneven sea of houses. At its fe
and it the immediate vicinity of the Brahmin's residential quart
stands St. Joseph's College. This consists of a large compou
containing school buildings, laboratories, student's quarters,
church and a monastery, and playing fields. Founded at Negapata
in 1844, the university was transferred to its present site in 188
Father de Nobili's dream has been fulfilled; a Christian School no
stands in the very heart of a stronghold of Hindu Brahminism. Ma
contacts and much friendship has been established between t
Catholic priests and the 'Sons of the Gods' (or Brahmins). Tod
there are some 1500 pupils at St. Joseph's and about 1900 universi
students. Of this total, about 1300 are Christians and the remaind
are Hindus, mostly of the Brahmin Caste. [....]

Modern Education in India never left the 'immediate vicinity of t
Brahmin'. The story of Christian Missions can also be paraphrase
as a story of dedicated, possessive investment in reconfiguri
brahmins and his allies for a changing world. Babasaheb makes t
same point with sufficient evidence in his paper '*Christianizing Indi*
As you see from the paragraph above, getting closer and maki
contact with the brahmin translated into a university campus ne
the brahmin street. The permanence of brahmins and his allies



A photo from Christian India captioned 'Brahmin Girls at Holy Cr
Tiruchirapally' p.105'

the intellectual class of India was consolidated by Christian Missions to a great extent. There was no attempt to fundamentally challenge this structure. Even the Constitution of Independent India does not clearly challenge this permanence.

In lieu of a Conclusion

Unlike any other social group in India, the brahmin and his friends could develop into a national class with well-oiled networks and even a common language. The case of Dakshina Fellowships in Western India helps us with a view of this national class formation. This short write up provided a glimpse of the variety of specific brahmin (and other dwija) scholarships made available in universities in the 19th and 20th century. The case of Banaras Hindu University is exemplary on this count. Higher Education or higher learning like bureaucracy and judiciary became a very important site of nationalization for the brahmins. The new quota for the 'poor savarna' should be read in continuity with these histories of communal investment. The cost of the poor brahmin is stomached by everyone in the caste system, especially the bahujan.

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WHY EWS NOW?

ISSUES WITH 10% UPPER CASTE RESERVATION: "POLITICS OF PRESENCE" OR "ELECTORAL STRATEGY"?

Rajanikanta Gochhayat

Is the latest quota move by the NDA government led by BJP an issue of group representation of the upper castes or an electoral strategy before the 2019 general election? It is both the 'politics of presence' and 'electoral strategies', bringing some inputs to the reservation debate too. The 'politics of presence' talks about the identity of the representatives and community interests. It's a well-known fact that Indian politics is influenced and dominated by upper caste leadership. There is much debate on whether the leadership of the marginalised groups has been effective in terms of protecting the communities' interests or not. However, there is hardly any debate on how the upper caste leaders represent their community interests.

In 'politics of ideas', it does not matter who the representatives. What matters here is what is being represented and which issues are debated. However, this hardly takes specific community interests into consideration. Thus, political scientists advocate for the group specific representation in favour of minority communities in the political sphere, since their presence may have positive influence on the policymaking process and community interests can be protected effectively. So the identity of the representatives' matters in a multicultural society as every community has distinct social and cultural interests. Apart from the distinct culture, the representatives share the same socio-cultural life with the community, so the community interests can be effectively voiced by the group representatives in the policy-making process.

In this context, it can be observed that there is over-representation of the upper caste leadership in the cabinet under the current NDA government (2014-18) as well as older cabinets under different political conditions. And the present cabinet has taken such group representation efforts to the next level with the move of 10% quota for the poor upper castes, as they did with the introduction of new roster policy for faculty recruitments in the universities. Under the new roster policy, each department is supposed to be taken as a unit for recruitment which sabotages effective reservation for SC/ST/OBC candidates.

In another perspective, it can be analyzed as the electoral strategy of the BJP. Upper castes have always been the 'core vote bank' for the party. Through its different moves, the party claims to be the true representatives of the upper castes and tries to prove the Congress as anti-hindu and anti-upper caste. Congress has hardly ever been anti-hindu or anti-upper caste and they even proposed 10% quota in 1991 for such sections. It also banned cow slaughter in about 24 states way back in 1955 when BJP was not even formed. But after Congress party recently changed its campaigning strategy recently to show an even more pro upper caste face, including steps like Rahul Gandhi's visits to temples, his wearing a janeu and identifying with a gotra. In the case of dilution of the SC/ST POA Act, BJP didn't defend the the important provisions of the act in the Supreme Court. This aided the court's decision to dilute the act. After spontaneous revolt by the SC/ST community against this dilution the government had to quickly restore the removed provisions. This spread a wrong image of the party among the upper castes. After the defeat in the recent Assembly elections in the cow belt states, BJP is trying to appease the upper castes through this latest move. What is more astonishing incident was that BJP, which was struggling due to the lack of majority in the Rajya Sabha over the last 4 years, passed the bill with unanimous support from all the opposition parties including Congress and Left. Like the Congress, the Left parties have also shown historical support to such a move and have even tried to implement such reservation policy in Kerala recently.

Emerging issues in the new quota move

There are some emerging issues around this new reservation debate

in the form of social, economic, political and legal dimensions. There are two amendments under the article 15 and 16 in the 124th Amendment Bill. The bill provides reservation to the economically weaker sections. However, the parameters taken into consideration seem to be ironic: those households having 5 acres land or less, or 1000 sq. feet residential property or 8 lakh per annum income are eligible for the reservation. On the other hand, it prompts the pro-poor thinkers to rake up the issues of landlessness among the SC/ ST/OBC in this context.

The article 16(4) says that the community which is found inadequately represented in the services under the state can be given reservation. Can it be used to support the upper caste reservation? As far as representation of the upper castes in public institution sis concerned, they are highly over represented. According to recent data, Scheduled Castes, Scheduled Tribes and OBC are under-represented in the higher echelons of the government services in the Group A and Group B, and most of its institutions, including central universities. The figures seem to be surprising in the faculty positions held by different social groups in the 40 central universities. Here the reservation for OBCs is only applicable at the level of Assistant Professor. But even at that level, their share is only 14.38%. The OBC representation is zero at the Professor and Associate Professor level positions in these central universities. The data shows that 95% of Professors, 92.9% Of Associate Professors and 66.27% of Assistant Professors are from the general category. The representation of general category is 68.82% in the railway sector, 62.95 in 71 departments, 66.17% in HRD Ministry, 80.25% in cabinet secretariat, 73.84% in Niti Aayog, 74.62% in president's secretariat, 76.92% in vice-presidents secretariat, 64.76% in UPSC and 66.79% in CAG. OBCs are severely under-represented in those 'Group A' and 'Group B' positions from the railway sector to the CAG. Therefore, it is essential to think about why there is a need to give reservation to the over-represented group.

Reservation is not a poverty alleviation programme. However, the question arises now as to who needs group specific policies. If a community facing discrimination on the basis of group identity, there is a need for group specific policy. Under the pro-poor policy there is no equal access to the discriminated groups such as Dalits

as they still face discrimination in differnt such schemes like Publi Distribution System (PDS). Another question that this policy raises i whether the upper caste poor, having 5 acres land or annual incom of 8 lakh can get out of poverty without government intervention The answer would be in in the affirmative, since they enjoy favourable environment for their participation in socio-economi activities under the hierarchical caste system, not being subject t norms of purity, pollution, social ostracism and discrimination whic are also the causes of poverty among Scheduled Castes.

There is hardly any evidence of the upper castes being discriminate against on the basis of group identity in land market, labour market capital market or in buying and selling products. On the other hand Dalits face discrimination in carrying out various economic activities Is there any discrimination against the upper castes in the private sector job markets? Contrary to that, they are given preference over the oppressed communities in recruitment. Members from Scheduled Castes, Scheduled Tribes and Religious Minorities face discrimination in the private sector job market simply due to thei identity. Thus, reservation for the Upper Castes is not about a solution to alleviate poverty but to further their representation in various spheres. If there is any unemployment among the upper caste, it is voluntary unemployment. This is happening because they hesitate to take up the occupations not assigned to their castes under the division of labour. To alleviate poverty, they need to annihilate caste. Lastly, reservation is a safeguard to counter identity based discrimination and ensure representation of the marginalised groups, not to alleviate poverty.

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THE 124TH AMENDMENT AND THE POLITICS OF RETRIEVING SLIPPING VOTES

Omprakash Mahato

With the Lok Sabha elections approaching closer, one can observ different political parties indulging in lot of political gimmicks ar electoral gambling. These electoral gimmicks and vote bank politi are not limited to a specific political party, it is rather a gener political rhetoric that has evolved as a trend ahead of electio in this era of populist politics. Recently the Congress party, aft forming their government in Madhya Pradesh, had declared waiv of farmers' loans--this is part of the same populist agenda that th voters have been witnessing for decades.

The failure of BJP, in the past four and half years of their governanc in delivering the promises made during 2014 Lok Sabha election their manifesto has created concerns within the party. After the failu of the state to address the farmers issues, demonetisation, GS Jan Dhan Yojana, Ujjwala Yojana, inability to generate employme for the youth, and bring 'achhe din' for the poor masses, the ruli political party has brought in two dramatic amendments, which return would provide political mileage for the BJP, in luring tho votes who had earlier been loyal to the party.

This article highlights two recent bills that have been brought by the BJP, one approved by both the houses and the second the lower house of the Parliament. First, the introduction of 10 reservation for the upper castes, emphasising only econom criteria, through which BJP hopes to reconcile the upper caste vot Secondly, the Joint Parliament Committee which was appointed

look into the matter of 'Citizenship Amendment Bill 2016 gave it a green signal and it was later passed by the Lok Sabha. With the implementation of the Citizenship bill, Hindu, Sikh, Jains, Parsis, Christians and Buddhist minorities who came from the neighbouring states of Bangladesh, Pakistan, and Afghanistan without any legal document in recent years would now be able to avail legal citizenship of the Indian state.

The context in which reservation was provided to SC, ST and OBC

The cabinet decision to pass an ordinance of giving 10% reservation to those upper castes who are economically poor was backed by the CPIM, BSP, AAP, RLD, Congress, CPI, RLSP, and others who seem to share a short-sighted understanding of the context in which reservation was introduced in India. Article (15) and (16) of the Indian Constitution say that all those who belong to socially and educationally backward category can avail the benefit of reservation. Even the parties that pretend to fight for the cause of social justice have gone against the very idea of social justice and have fallen prey to the hands of their savarna masters. Going by the constitution, there are two contexts as argued by Gurpeet Mahajan in which reservation has been provided to SC, ST, and OBC category. SC and ST community get reservation because they have been historically excluded in social, political and educational spheres of everyday life. These communities were socially ostracised, culturally boycotted, politically not represented and educationally left behind. It is ironic that even after seven decades of independence, the Maha-dalits still face an extreme form of social segregation in the rural villages of Bihar. The occupation of 'Musahars' is still hunting rats for their everyday survival. Since these communities were discriminated historically and the practice of untouchability made it practically impossible to interact within different communities, reservation came as a result of negotiation between Ambedkar and Gandhi, to bring them to the mainstream society. **For reservation, Ambedkar was forced to compromise with the separate settlement and separate electorate for Dalits granted by British Raj through the Round Table Conference held in 1932.**

However, reservation for OBC was not provided in the context of discrimination as in the case of SC and ST but rather in the context

of OBC being disadvantaged. OBC community also faced socia discrimination from the upper caste communities, however, they were not ostracised the way untouchables were. It is not to say tha OBC were never discriminated but the process of discriminatio was not in the form of forced exclusion. OBC communities who were known as Shudras in the ancient time were forced to remain the servants of upper three varnas of Hindu social order, they were denied the right to education, bear arms or accumulate wealth and deprived of political rights. The OBCs were disadvantaged as they were educationally backward and politically under-represented. Thus the constitution provides reservation to the SC, ST, and OBC on the grounds that these communities are socially and educationally kept backward. In this background, providing 10% reservation to the economically weaker section among upper castes dilutes the very essence of reservation. Art. 15(4) of the constitution does not have any provision to provide reservation on economic ground. Further, if we analyse the evolution of reservation, one can see that the target of reservation was specific groups that faced exclusion at different junctures in history, in their socio-cultural, political and educationa spheres. Now, even if we borrow the argument brought in by BJP that certain provision should be made for the economically weaker upper castes, there has to be a differential treatment for both the groups. As both the communities face a different set of problems different sets of treatment are required. Just as 'paracetamol' cannot be the same medicine for two different patients, one suffering from headache and the other who has broken legs.

Apart from social and educational backwardness, there has been constant and long struggles and sacrifices by the backward classes for availing reservation. In contrast, upper castes who have been the ruling class historically and the at same time oppressors o the former communities are now going to avail the same benefi without any logical ground. The reservations for SC/ST and OBC has been stigmatised, criticised and opposed by the upper castes politically by the left, right and centrist parties (Communist Parties BJP and Congress) primarily dominated by upper castes. There is no need to mention what had happened during the Mandal era o reservation. Ironically, at present when the savarna is going to ava the reservation, even the parties which claim to be champions o

social justice are not only silent but giving full fledged support in parliament as well as outside.

Reservation not a poverty alleviation scheme

It is also important to note that reservation is not a poverty eradication welfare scheme. For the poverty eradication programme, there are certain policies such as MNREGA, Indira Awas Yojana etc. that target all those communities that are economically poor. There is BPL (Below Poverty Line) and APL (Above Poverty Line) list introduced by the government for both the upper and the lower castes by which those families falling in the BPL list can avail the schemes and assistance provided by the government. Therefore, it seems that the ordinance brought in by the ruling government to provide 10% reservation for the economically backward upper castes, is nothing but an electorally calculated move to consolidate those upper caste Hindu votes that seem to be going into the pockets of Congress or other political parties. Moreover, the country that suffers from acute poverty, keeping Rs. 66666.66/month or 8 lakhs per year as a bar for the economically poor category, is something that even economists have failed to understand.

The case of Citizenship Amendment Bill 2016

In another case, the process of re-establishing aspirations and providing hope to the Hindu community has been backed by the 'Joint Parliament Committee' with its approval to implement 'Citizenship Amendment Bill 2016'. In the campaign for 2019 Lok Sabha election in Silchar, Modi stated that the Citizenship bill is the 'redemption of past injustice' and it will take care of 'blood relations' of Hindu sons and daughters of *Bharat Mata*. This bill was introduced in Lok Sabha to grant citizenship to those Hindu, Sikh, Jain, Christian, Parsis and Buddhist minorities who have entered India before 31st December 2014 from the neighbouring states of Bangladesh, Afghanistan, and Pakistan.

In the first case, the ruling party through its rhetoric is consolidating upper caste vote, and through the 'Citizenship Amendment Bill', the second bill, is in the process of expanding its vote banks by granting Citizenship tp Hindu immigrants from neighbouring countries. However, the attack perpetrated on farmers in the protest march in

Madhya Pradesh, UP and the continuous violence on Dalits show that there is little concern for the 'Hindu' people living in India. Th impact of this citizenship bill is worst in Assam leading to agitatio from different political groups as there are already lakhs of illeg immigrants from all religious groups residing in Assam. The diabol irony of Indian democracy is that the ruling regime of the India state wishes to protect some indigenous communities of Assam b granting them Scheduled Tribe status while at the same time it is hel bent on destroying Assam by passing the Citizenship Amendmer Bill 2016. The important point in both these bills is that they go approved in the lower houses within two days. It is nothing less tha making history with regard to the efficiency and energy with whic the parliament has worked for this.

In both the bills there was neither ample discussion on the subjec nor any commission formed to look into the subject as had happene in the case of Mandal Commission and the Kaka Kalekar Commissio earlier, a process which took more than 3 decades to see its fin shape.

The way in which the social justice parties have responded to th bill is also disheartening. In politics, the parties not taking decisio on the bill, simply means that the parties are letting others decide o behalf of them. Since the 124th Amendment reservation bill did no go through any scrutiny, it produces more doubt about the intention of the government. Moreover, the caste census data had not bee collected since 1931 and the new data from SECC 2011 has no been released fully. Therefore it makes it more difficult to locate an determine the socio-economic status of any household. The state policies, even if they aim to enhance the economic condition o upper castes, should not be at the cost of social justice. The new independent India promised that every citizen in the state woul have equal say in democracy and thereby gave equal rights to all th citizens. Therefore, it must conduct the caste census and bring th question of proportional representation to the mainstream debate

RESERVATION FOR UPPER CASTES: FIRST STEP TO ELIMINATE RESERVATION AND CHANGE THE CONSTITUTION

Jitendra Suna

The government of India has brought out a bill in a day without the knowledge of its citizens and stakeholders of the reservation system. BJP government after an unsuccessful attempt to scrap the SC/ST Atrocity Act have started another vicious act of tampering with the constitution through reservation policy. This time they are eyeing to dilute and scrap the reservation policy which was meant for socially and educationally backward communities. Now, this government is trying to bring an amendment to the constitution for the inclusion of upper castes in the reservation system.

They are proposing 10% reservation for upper castes. In other words, it is one of the many steps to tamper with and change the constitution towards the destruction of the reservation policy on the basis of exclusion and historical injustice. The act of constitutional amendment which is proposed by the government should stop at any cost, or else it will completely give an open chit to the Savarna community to eliminate reservation policy which they have been eyeing for long. Various research studies have earlier shown that educational, economic, political and all kinds of government and non-governmental institutions have been monopolized by upper castes. Now, it seems that whatever the representation through reservation policy Dalit, Adivasi and OBCs got, the upper castes want to snatch away those as well. Reservation for upper castes

and a constitutional amendment will be the deathblow to the ve essence of social justice and reservation policy.

In colonial India it was the ruling class/castes which were getti reservation. It is in later phase that leaders like Shahuji Maha started giving reservation to the ex-untouchable communitie After a long struggle, leaders of anti-caste movement achiev reservation policy for Dalits and Adivasis. Reservation policy whi was introduced in the Indian constitution was not a program f poverty elimination. Therefore an economic criterion was not giv any place in it. Dalits and Adivasis were ostracised by the Hind for thousands of years. They have been excluded from all t institutions; they were debarred from any human rights. They we not considered as human, so forget about human rights. Reservati was given to SC/ST community for three specific reasons. Fir because of the historical injustice which Hindus have perpetrat on them. Second, the complete exclusion of these communities fro all the institutions and all walks of life, and third, it was a matter representation.

Now the current regime of fools, bigots, and fanatics want to bri a constitutional amendment to provide reservation for economica weaker section of so-called upper castes. Reservation for upp castes is an insult to the social justice movement, framers of t constitution itself. The upper caste people have developed de hatred against the reservation policy and so against the Dalit Adiv and OBCs communities. As a result, across the country, upper cas people have protested and brought about a deliberate debate scrap reservation, and when they could not do it, they have start advocating reservation on the basis of economic criteria.

It is also important to understand that the BJP government has other option left to fool/appease its core vote bank i.e. upper cast BJP have tried to bring in the debate of Ram Mandir but it is working anymore the way they want. They have promised yo to bring lakhs of jobs. Promises such as elimination of black mon corruption, and to bring in development have failed miserably. T country ruled by liars, fanatics, and lunatics has never bothered create jobs, bringing a stable economy and opportunities for citizens. In this context, reservations for the upper castes is

of the suitable and of course unsafe tricky games started by BJP. Unsafe and tricky because of this BJP is going to face the wrath of the weaker sections of the population of the country and it is suitable because it will appeal to the majority of the fools and casteist population (mostly upper caste youth).

It has already been known with the starting of reservation policy that left has a different stake in it, they never supported the reservation policy. However, over a period of time they had no option left, but to support. Congress showing its true colour of casteist nature and supported the government move. All the so-called progressive and regressive elements came openly in support of reservation for upper castes. CPI (M), Congress, Trinamool Congress, AAP, RLSP, RLD, and others. Including all these groups, all the upper caste sections of parties and movement are happily celebrating. However, chamchas/stooges are much happier than their masters. In fact, it is the Chamchas who have started arguing for reservation for upper castes. These Chamchas such as Udit Raj, Athawale and others need a proper lesson from the community.

What is unfortunate and disheartening is the support of BSP supremo Mayawati on the matter. However, it is not surprising because in 2011 Mayawati wanted to give reservation for the upper castes. If Mayawati and BSP are not understanding the gravity of the situation of the tampering with the core of the reservation policy, then there is something seriously wrong with the party and for that BSP will pay a bitter price in the coming future.

Last time BJP tried to tamper with the SC/ST (Prevention of Atrocities Act) and they paid the price for that, they witnessed widespread protests that sparked all over India. It is time for Dalit, Adivasi, and OBCs to show the the notorious BJP and their chamchas their place. Now, it is time for them to organise. It seems from the current fact that no political parties understand the grave situation going on currently and what the BJP is up to. In such a situation, communities who are oppressed by this very Brahmanical casteist society cannot sit silently.

ULTIMATE GATEKEEPERS: THE APEX JUDICIARY

CRUMBLING SOCIAL JUSTICE AND THE NEED FOR REPRESENTATIVE HIGHER JUDICIARY

Dr. Ayaz Ahmad and Dr. Yogesh Pratap Singh

This article attempts to explain the discursive role of higher judiciary in shaping the constitutional discourse on reservations which finally culminated in the 103rd constitutional amendment for upper caste quota. Such a patent assault on constitutional goals of social justice through the Supreme Court and the High Courts once again heightens the need for Bahujan (SC/ST/OBC) representation in higher judiciary. However, brahmanical strategies to exclude Bahujans from the higher echelons of judicial power are operative in multi-layered fashion through an inter-institutional caste grid which makes the goal of representative judiciary even more difficult to achieve. The move for upper caste quota, more than ever, makes it possible to expose the inter-institutional caste grid couched in the language of separation of powers, institutional independence and principle of checks and balances. The examination of upper caste quota through judicial pronouncements reveals the operation of this inter-institutional caste grid characterized by Brahmin-Baniya hegemony.

Judicial discourse on reservation from 1950 onwards focused on expanding formal equality as enshrined under Articles 15(1) and 29(2) while drastically confining the principle of substantive equality inherently embedded in Articles 14, 15, 16, 38, 46, 332, 335, 338 and 340 (refer to glossary below). This strategy was initially developed to preempt claims of proportionate representation in

educational institutions on mythical grounds. The first ever attempt for reservation did not find favour with a constitution bench composed of Brahmin-Sayyed judges in *Champakam Dorairajan* case (1951) as it marginally restricted savarna space by prescribing their percentage of representation and created some space for Bahujan students in the process. It was left to the determined efforts of Periyar and Babasaheb Ambedkar to claim the Bahujan space in educational institutions by convincing the Parliament to pass the First Constitutional Amendment which enabled the State to make special provision for the representation of Bahujan class in educational institutions. Despite this, constitutional courts deployed the 'judicial policy of postponement of social justice' to deny Bahujan representation both in educational institutions and State services. But the First Amendment and implementation of social justice policies by Southern States under Periyar's watch made the High Courts and the Supreme Court quite anxious.

The first major blow to reservations came in *Balaji* case (1962) where the Supreme Court made three strategic moves. First, with respect to determination of criteria for the identification of socially and educationally backward classes, the Supreme Court underplayed the role of caste and made a case for determining the backwardness on the basis of economic indicators. A constitution bench crammed with Brahmin-Baniya judges carefully crafted the economic argument to prevent social and educational arguments from taking strong roots. In a way, the seeds of upper caste quota on economic grounds were planted with this judgment. Interestingly, caste as a factor for determining backwardness was marginalized by fraudulently assuming that the test of castes would be inapplicable to Muslims and Christians. Second; it prevented the categorization of OBCs into Backward Class and More Backward Class by holding that such a categorization is outside the scope of Article 15(4). Third; a casteist reading of Article 335 in the context of Article 15(4) which eventually paved the way for a 50% ceiling. Similar reasoning was also used in Rangachari case (1961) to reduce reservation as an exception to equality clause rather than promotion of equality. This exceptionalism of Rangachari case was reiterated in *Balaji* case to justify limitations on the quantum of reservation.

Legitimization of Balaji Rule

The strategic interpretations of the *Balaji* case were legitimized over decades by the courts, jurists, journalists and textbook writers. For instance, the Supreme Court in *Devadasan* (1963) and *Chitralekha* (1964) reiterated the economic argument of *Balaji* with greater emphasis. Such fraudulent reasoning was employed by the constitutional courts to delay social justice so that the ruling class was able to develop neutralizing strategies. However, relentless social movements forced the Supreme Court to concede some space in *N. M Thomas case* (1975) in the following words:

"...an aware mass of humanity, denied justice for generations, will not take it lying down too long but may explode into Dalit Panthers, as did the Black Panthers in another country...Jurists must listen to real life and, theory apart, must be alert enough to read the writing on the wall! Where the rule of law bars the doors of collective justice, the crushed class will seek hope in the streets!"

It was the writings of the crushed Bahujan class which compelled the Supreme Court to reconsider its obstinate position on reservation. But true to its casteist nature and to subvert the writing on the wall, the Supreme Court laid the foundation of 'creamy layer' in the same case. Savarna lawyers and judges in *N. M. Thomas case* onwards started expressing their anxieties about the impact that social justice policies might have on their disproportionate share in public services and educational institutions. Therefore, by the time *Indira Sawhney* (1992) came for decision in the Supreme Court, there was already a Notification for 10% quota on economic grounds. In *Indira Sawhney* (1992) case, the Supreme Court could not immediately make out how to uphold 10% quota for upper caste as in the same judgment it had to freeze many anti-social justice devices like creamy layer, 50% ceiling, prevention of reservation in promotion etc. which were developed over a long period of time. However, in the same judgment Supreme Court specifically advised the ruling castes/class to cloak the provision for upper caste reservation in the form of economic backwardness to make it constitutionally valid in the following words:

"Economic backwardness may give jurisdiction to state to reserve provided it can find out mechanism to ascertain inadequacy of

representation of such class. But such group or collectivity does not fal under Article 16(1)".

It was now left to the political wing of upper castes, which was alarmed by the partial implementation of the Mandal Commission report, to come up with a constitutional strategy to enforce upper caste quota. The BJP government in 2003 appointed a Group of Ministers to come up with ideas that could be implemented for the poor among the upper castes. In 2004, a task force was set up to work on the criteria of reservation for the economically backward savarana. In 2006 the Congress-led and RSS-guided UPA 1 appointed a commission to study separate reservation for economically backward people from the upper castes. The commission submitted its report in 2010 the proposal to implement it was prepared by 2013 which involved amendment to the constitution. Eventually on 12 January 2019 conceived by Courts and delivered by RSS-guided Congress and BJP the constitutional amendment for 10% reservation of upper castes in the form of EWS (economically weaker sections) was notified. It is now being implemented at lightning speed by different government departments both at central and state level.

Constitutionality of Upper Caste Quota vis-a-vis Basic Structure Doctrine

The constitutional validity of 10% upper caste quota can be challenged only on the ground that it violates the basic structure of the constitution. However, in order to appreciate this mechanism one needs to understand the 'basic structure' doctrine evolved and practiced by the Supreme Court. The Constitution of India was drafted by the Constituent Assembly which was elected by provincial legislatures, which in turn were elected by an electorate restricted by property and educational qualifications which were the monopoly of Ashraf-Savarna castes. Thus, the Constituent Assembly was not elected by adult franchise and did not have the full approval of socially and educationally backward classes of its time. Nevertheless, and in tune with the well-established tradition of constitution making, the Constituent Assembly enjoyed full power and authority to make the Indian constitution. But as no one generation can bind all succeeding generations, the power of amending the constitution is inbuilt in every constitution which is

passed over from generation to generation. Power of amending the constitution through constitutionally prescribed procedure operates as a device through which constitutional allegiance can be renewed by each generation. Therefore, the power of amendment, like the power of making the constitution, is beyond the scrutiny of courts, as courts themselves derive their legitimacy from such powers under the constitution. The Indian constitution too preserved this right of ensuing generations to amend the constitution through the Parliament with a special procedure prescribed under Article 368.

However, the Supreme Court in *Kesavananda Bharati* case (1973) by a wafer thin majority of 7:6 laid down that even the constitutional amendment can be judicially reviewed, if it infringes on the basic structure of the constitution. The power of the Parliament to amend the constitution was recognized but it was utterly limited by the condition that the Parliament cannot alter or destroy the basic structure of the constitution by using its amending power. Strategically, the precise contents of the basic structure of the constitution were left undefined and kept open. Over a period of time the Supreme Court has held that the basic structure of the constitution includes Fundamental Rights, Federalism, Secularism, Power of Judicial Review, Rule of Law, Parliamentary System of Government, Independence of the Judiciary, Principle of Free and Fair Elections, Powers of the Supreme Court under Article 32 and High Courts under Article 226 and a few more vague principles. Moreover, the Supreme Court misappropriated to itself the power to add on to this list as and when it deems fit in any case before it. In effect, with such wide and arbitrary powers, the Supreme Court has transformed itself into some kind of permanent Constituent Assembly but without the approval of the people!

Surprisingly, the basic structure doctrine failed to provide any protection against the imposition of emergency in 1975 and yet it was legitimized as a guarantee against similar excesses in the unforeseeable future. There is not even one instance where 'basic structure' was used to protect Bahujan interests. On the contrary, serious attempts have been made (*M Nagaraj* case 2006) to utilize this doctrine in order to derail social justice oriented amendments to the constitution. In all probability, this doctrine would eventually be used as a safety valve against legitimate exercise of the power to

amend the constitution by a Bahujan controlled Parliament in the future.

Under the present circumstances, the 103rd Amendment Act can be invalidated on grounds of violation of the basic structure and the reasoning for such a conclusion can be formulated on the basis of inner logic which governs the doctrine of basic structure. It would go something like this; "Fundamental rights are part of the basic structure of the constitution, fundamental rights include right to equality, right to equality includes both formal equality and substantive equality, provision of reservation based on social and educational backwardness in turn is part of substantive equality, reservation on economic grounds violates the principle of substantive equality, 103rd Amendment Act thus is in violation of fundamental rights which is the basic structure of the constitution. Every part of this reasoning is based on extent principles articulated by the Supreme Court in different cases yet, it is highly unlikely that the present Supreme Court which is completely under the control of Brahmin-Baniya class and committed to protect their interest would even consider such a reasoning let alone base its judgment on it. The thumb rule of higher judiciary it appears is; logic and reasoning be damned but the interests of upper castes must be protected at any cost.

Bahujan Reservation vs. Ashraf-Savarna Reservation: Constitutional Courts Suffering from Selective Amnesia

Inexplicably, all articles and clauses dealing with social justice even in Part III of the constitution were in the form of enabling provisions which obliterates the difference between Directive Principles of State Policy and Fundamental Rights. Such haziness around policies of social justice only enables the State and higher judiciary to drag their feet on Bahujan reservation for as long as possible. As a result, OBC reservation at the central level could not be implemented despite Article 16(4) until the early 1990s. Many states are yet to implement Bahujan reservation to the legally prescribed limits. Even when half hearted and belated attempts were made for Bahujan reservation they got stayed by higher judiciary on one pretext or the other. Invariably final judgment on such cases came only after substantially diluting their effect and imposition of dilatory conditions. Article 15(6) and

16(6) added by 103rd Amendment Act are also enabling clauses but seem to operate in a different realm altogether. There seems to be an active competition between different departments of the central and state governments as to who will implement it first! Within days of enactment, cabinet announcements for the implementation of savarna-ashraf quota started coming thick and fast and so far, none of these attempts got stayed by higher judiciary and rather, it has become ardent facilitator of upper caste reservation. In the process, the following series of 'quantifiable data' which higher judiciary in the past had demanded from every attempt of social justice for the Bahujan class is lost without demand:

1. The State must collect quantifiable data on the backwardness of the class for which the provision for reservation is being made;
2. The State must provide quantifiable data on the inadequacy of the representation of that class in public employment;
3. The State must establish, again through quantifiable data that the general efficiency of service as mandated by Article 335 would not be affected.

The higher judiciary miraculously seems to have forgotten all these requirements of 'quantifiable data' in case of ashraf-savarna reservation while deciding the stay applications on upper caste quota. Nor did it insist on the placement of material on record showing that there was a compelling necessity for the exercise of the power under 103rd Amendment Act, a mandatory condition culled out from *M Nagaraj* (2006) which was used by the Supreme Court in *BK Pavitra* I (2017) to strike down Sections 3 and 4 of the Reservation Act 2002 of Karnataka. Moreover, breach of 50% ceiling has been frequently invoked by the apex court to stay the implementation of reservation provisions meant for Bahujan and it should have been sufficient ground to stay the impugned amendment. But it appears that there are different yardsticks to measure Bahujan interests vis-a-vis Savarna interests by the higher judiciary. This is certainly not a one off case of momentary lapse of judicial discretion. It forms part of a series of cases on social justice where the non-representative higher judiciary seems to suffer from a chronic form of selective amnesia. The mandatory requirement of quantifiable data on the inadequacy of the representation of 'that' class in public employment has been

deliberately and purposefully dropped from Section 3 of the 103rd Amendment Act which inserted Article 16(6) into the constitution. This would provide an excuse to the higher judiciary to review the provisions for upper caste quota on a scale different from the one on which Bahujan provisions for reservation have been reviewed since coming into being of the Indian constitution. Even in its absence the higher judiciary would have in all probability conceived of some other excuse to achieve the same result.

Non-Representative Higher Judiciary and its Precarious Implications

Ever since the transfer of power from the British to the Congress party, all state institutions have been inhabited by a few dominant caste groups. It has had the most undesirable influence on the democratic character of state institutions brought into existence by the Indian constitution. The principle of separation of powers translated into the principle of checks and balances has been the greatest casualty of this brahminocracy. The dogma of separation of powers simply melts away in the wake of umbilical caste unity across state institutions. For example during emergency in *Habeas Corpus* (1976) case the Supreme Court miserably failed to protect basic liberties of people which were under attack and made a mockery of the principle of checks and balances. A non-representative higher judiciary could not stand up to the authoritarian Prime Minister who came from its own caste/class. Again during Kamandal agitation the higher judiciary failed to prevent the failure of legislative and executive wings of the state to uphold constitutional democracy endangered by politically ambitious fellow caste brethren. Sharing of power by diverse social groups is, therefore, a better guarantee against autocratic tendencies than the multiplicity of institutions avowedly designed to checkmate such threats. Higher judiciary can act as an effective check on the vast powers of the executive only if it is representative of different social groups who stand to lose the most under an authoritarian anti-democratic regime. It is the lack of such representative character which enables the Indian higher judiciary to dutifully blink whenever the executive embarks on autocratic adventurism.

Similarly, this non-representative higher judiciary has constantly

[1]Gail Omvedt, Understanding Caste: From Buddha to Ambedkar and Beyond, 66 Orient Blackswan, Delhi, 2011.

punctured the constitutionally envisioned social revolution. It continues to mediate the transition from 'Brahmanic Socialist State' to 'Brahmanic Capitalist State' on behalf of ruling castes with regressive outcomes. Disingenuous techniques have been adopted by the higher judiciary to give effect to the policy of denial of Bahujan representation in all spaces preceded by the term 'higher'! Let's take the issue of Bahujan representation in 'higher education' in neoliberal times and the role of higher judiciary in it. With the major share of higher education now in private hands, the Supreme Court in *P.A. Inamdar* case (2005) declared that the State could not impose its policy of reservations on private institutions. To overcome this myopic verdict, Article 15(5) had to be introduced in the Constitution. While the constitutional validity of Article 15(5) was upheld in *A. K. Thakur case* (2008), the judicial policy of postponement of social justice was at full play in private higher education as well. Firstly, the Supreme Court through its judgment in *Inamdar* case ensured that the Bahujan do not get representation in private higher education at its formative stages. Secondly, Article 15(5) is again only an enabling provision which means that the issue of representation of Bahujan students & staff (both academic & administrative) in private higher education is now dependent upon the sweet will of the Legislature and Executive of each State. The net effect of *Inamdar* judgment is that it postponed the question of representation of Bahujan in private higher education by a decade or two by making it contingent on the political conditions of different States. Even where the political will could be mustered to implement the mandate of Article 15(5), judicial hurdles continue to abound. For example the State Legislature of Uttar Pradesh passed the Admission of Educational Institutions (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 2006 in order to override the decision in *Inamdar* by making provision for reservation of seats for SC, ST and OBC classes in admission to educational institutions, including private educational institutions. But the Allahabad High Court prevented the enforcement of this Act on one pretext or the other, and finally gave a fatal blow to it by declaring the key provisions of the Act unconstitutional in Sudha Tiwari case in 2011. The net result is that there is no provision for representation of Bahujan in private educational institutions of UP

till date despite the enactment of Article 15(5).

Bahujan Representation in Higher Judiciary

Under Article 16(4), reservation for SC, ST and OBC in higher judicia can become a reality through legislative or executive instrumen But the Supreme Court has been laying down epistemologic foundations for decades to thwart any such attempt in future construing that reservation in super specialty courses/high echelon of power would impair the efficiency of administration und Article 335. On the contrary, the thrust of Article 335 is to ma the administration efficient by ensuring representation of diver sections through reservation or other instruments of affirmati action. Therefore, it is essential to take into consideration the clai of the SC/STs and OBCs while making appointments to servic and posts in connection with the affairs of the Union or of a Sta which apparently includes higher judiciary. Thus, combined readi of Article 16(4) and Article 335 provides full scope for Bahuj representation in higher judiciary, but to achieve the same, w need to defeat the brahmanical tendencies deeply embedded in t decision making of the Supreme Court.

Yogesh Pratap Singh and Ayaz Ahmad, "Privatization of Higher Educati in India: Constitutional Vision, Emerging Issues and Trends" RGNUL La Review, Vol. 7 : No.-II, 2017.

Bahujan Representation in Higher Bureaucracy

The story of Bahujan representation in 'higher bureaucracy' equally revolting. By the end of 1950s, it became clear that due hatred in the belly, Bahujan representation in higher bureaucra could not be ensured without some provision for reservation promotion. Legislative attempts to make reservation in promoti by some states were constantly blocked by the higher judicia *Indira Sawhney* (1992) mutilated it to such an extent that 7 constitutional amendment (1995) which added Article 16(4A) cou make enabling provision for reservation in promotion for SCs and S alone, implicitly excluding OBCs from its ambit. Promotion schem under Article 16(4A) was yet another device after 'creamy layer' mark out reservation policy for SCs and STs from that of OBCs that one group could be played against the other. Thus, while payi

lip service to the wily provisions of Article 16(4A) in *BK Pavitra* II judgment (2019), the Supreme Court did not miss the opportunity to promote these two apertures in reservation policy created by itself! This judgment also attempted to integrate the creamy layer principle into the basic structure of the constitution and made a forceful case for extension of creamy layer principle to SC and ST categories as well. If the doctrine of creamy layer is somehow helpful for the poor of a particular category to enter public education and public service and if the object of 10% upper caste quota too is to help the poor of general category to do the same, then the extension of the doctrine of creamy layer to general category would completely demolish the unsubstantiated need of the poor of general category to get a separate quota. The same result could be achieved more advantageously for the poor of the general category by simply extending the doctrine of creamy layer to the general category which would provide 50% field for the poor of the general category to plough. The fact that neither the Supreme Court nor the Parliament ever came anywhere close to making such a suggestion despite already imposing the doctrine of creamy layer in OBC category and itching to impose it on the SC and ST categories brings out the real object of both the doctrine of creamy layer and 10% upper caste quota. Firstly, to pick the relatively weak from the Bahujan class and juxtapose them with the best of upper caste so that the gap between them can be pointed as the justification for perverted efficiency argument under Article 335. Secondly, to keep as many seats/posts from the reserved categories vacant for as long as possible. Thirdly, to reduce the space for Bahujan to compete in the general category. With such undemocratic and unconstitutional measures eventually, to stamp out the Bahujan from higher education and services.

These tactical interventions by the Supreme Court enabled the legislature and the executive; firstly, to make higher bureaucracy subservient to the corporate bosses which characteristically comprises of Brahmin-Baniya duopoly so that whenever a few SC/ST officers reach senior positions in higher bureaucracy, they continue to take orders from brahmanical class rather than the other way round, and secondly, to make provision for direct recruitment of higher bureaucrats including joint secretaries and above without any provision for reservation. Latter feat was achieved by the

Supreme Court in the *Post Graduate Institute* (1998) case with t
help of *Dr. Chakradhar* (1988) judgment by holding that a sing
cadre post can not be reserved by whatever means. This pretty mu
sums up why the higher judiciary held up reservation in promoti
even for Scheduled Castes and Scheduled Tribes from late 195
before finally approving it in 2019 (*BK Pavitra* II) when it was alrea
rendered otiose. Even this seemingly progressive judgment reiterat
anti-reservation positions in a subtle manner by quoting sharp lin
from earlier deceptively progressive judgments. Consider these lin
quoted in *BK Pavitra II from Nagraj (2006) and Jarnail (2018) judgmen
respectively; 1) Reservation has to be used in a limited sense otherwi
it will perpetuate casteism in the country and, 2) There may be certa
posts right at the top, where reservation is impermissible altogether.* T
second idea was authoritatively mooted in *Indira Sawhney* (199
repeated in *Jarnail* and repeated again in *BK Pavitra* II to create
certain consciousness against social justice measures! It is y
another example which establishes that the traditional concept
separation of powers is inadequate to understand the performati
dimension of Indian legislature, judiciary and executive.

Once the performative dimension of the three wings of Indi
state is understood as unifying and strengthening the caste ord
the dangers of non-representative higher judiciary become qu
palpable. In fact, higher judiciary emerges as the linchpin of t
inter-institutional caste grid which often euphemistically pass
as the sentinel on the qui vive for the protection of fundamen
rights. Alignment of guardians of constitutional values with ruli
caste groups inevitably implies death of constitutional and soc
democracy. Introduction of 13 point roster and dilution of SC,
Atrocities Act by the higher judiciary indicates the perpetuity
such alignment. Unless the umbilical cord tied with caste ident
between higher judiciary and legislature/executive is broken
making all institutions representative, political democracy wou
remain endangered.

Parting Note

Thus, the genesis of upper caste quota on economic grounds lies
the non-representative character of higher judiciary which built
conditions under which it could be imagined by the brahmaniz

political class. Legal strategies to roll out such a quota were also developed, streamlined and supplied by the same judiciary. Therefore, every sincere attempt to fight EWS reservations and similar such provisions must make serious efforts for Bahujan representation in higher judiciary. These efforts include embracing legal education through creation of educational institutions owned and controlled by the Bahujan class. An educational space animated by Phule-Ambedkarite ideas integrating law with social sciences can become the launch pad for Bahujan representation in higher judiciary. With Bahujan leadership of higher judiciary, things like the 103rd Amendment Act would not become a reality. In addition, it would become possible to unleash the revolutionizing potential of Indian constitution to establish social democracy as propounded by Babasaheb Ambedkar. On a parting note, it is instructive to recall Babasaheb Ambedkar's famous lines about every constitution:

"However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good."

It is high time that the Bahujan class gets on to implement the constitution in the Parliament, Legislatures, Governments and most importantly in the higher judiciary.

Glossary of Articles, Constitution of India.

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

Article 15(4): This article contemplates special provision for the advancement of socially and educationally backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes.

Article 15(5): This article removed the Supreme Court imposed ban on the reservation of SC/ST/OBC in admissions to private educational institutions.

Article 15(6) & 16(6): These articles attempt to legalise specia provisions by the State in favour of the upper caste includin reservation in admissions and jobs.

Article 16(4): This article enables the State to make provision fo the reservation of appointments or posts in favour of any backwar class of citizens which, in the opinion of the State, is not adequatel represented in the services under the State.

Article 16(4A): This article enables the State to make provision fo the reservation in matters of promotion in favour of Schedule Castes and Scheduled Tribes.

Article 29(2): No citizen shall be denied admission into an educational institution maintained by the State or receiving aid ou of State funds on grounds only of religion, race, caste, language o any of them.

Article 38(1): This article mandates the State to promote the welfar of the people by securing and protecting as effectively as it ma a social order in which justice, social, economic and political, sha inform all the institutions of national life.

Article 38(2): This article specifically mandates the State to minimis the inequalities in income, and to eliminate inequalities in status facilities and opportunities, not only amongst individuals but als amongst groups of people residing in different areas or engaged i different vocations.

Article 46: The State shall promote with special care the educationa and economic interests of the weaker sections of the people, an in particular, of the Scheduled Castes and the Scheduled Tribes, an shall protect them from social injustice and all forms of exploitatio

Article 332: This article makes provision for reservation of seats fo SCs, STs in Legislatures.

Article 335: This article requires the claims of the members o the Scheduled Castes and Scheduled Tribes to be taken int consideration in the making of appointments to services and post in order to maintain efficiency of administration.

Article 338: This article makes provision for the National Commissio for the Scheduled Castes.

Article 338A: This article makes provision for the National Commission for the Scheduled Tribes.

Article 340: This article makes provision for the appointment of a Commission to investigate the conditions of backward classes.

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SOCIAL JUSTICE: JUDICIAL ANXIETY AND JUDICIAL FORESHADOWING

Abhishek Juneja

In this article, I attempt to unpack the vanguardist anxieties of Indian Judiciary and examine its role in the perversion of the Indian Constitution's design for social justice.

The rigid, hierarchical social order with the Brahmin on top, or the caste system, has traditionally been understood and normalized by the knowledge apparatuses as a timeless, continuous truth – almost as though a force of nature. This chronological rationalization of a social system inadvertently lends a degree of causality to it. The need to map and force-fit each of the present-day castes into the Vedic formulation of four-fold Varnas is one of its many manifestations.

Causal systems or Ordered systems are predictable, and hence to some extent, controllable. They are largely dependent on and determined by past events. The oldest causal logic used in sustaining the caste order has been the principle of karma and reincarnation which implied that birth in a particular caste was an outcome of the karma of the previous birth. This logic has evolved through the centuries and a more nuanced interpretation of karmic causation lies in the theory of merit that believes certain castes are superior because they have greater merit, which is a result of their hard work and innate talent. It is a debate worthy of a full essay whether this 'evolution' in logic – from birth to merit – is evolution at all. The other debate, which is briefly touched upon here, is whether the continuity

and, more importantly, the change in caste relations have non-causal determinants. To understand this, the apparently dialectical engagement of the Indian Judiciary and the Indian Legislature on the issue of affirmative action is put under scrutiny, including the curious case of Uttarakhand.

Basic Structure Doctrine: Judicial Roulette

The fundamental right of Equality, as enshrined in Article 14 of the Indian Constitution, primarily exists to remove all forms of arbitrariness from the sphere of justice. This entrusts the Judiciary with its most basic responsibility – that of ensuring that every iota of arbitrariness is weeded out beyond a reasonable doubt. The bedrock of Article 14 is the principle of Equality before Law, which in itself is a constituent of the principle of 'Rule of Law'. A.V. Dicey's conception of Rule of Law has three aspects – absence of arbitrary power, equality before the law and the primacy of the rights of the individual. The latter, however, is not applicable to the Indian context. It is vital to understand why 'the primacy of rights of individual' has been left out of the scope of Rule of Law in the Indian constitution. Unlike in Britain and other liberal democracies of the world, the individual in India did not have any rights prior to the adoption of the Indian Constitution. In the absence of Social Contract, and under the precinct of a caste-ordered society (which to quote Dr. Ambedkar provided for the division of labourers at the pretext of the division of labour), the idea of rights had been alien to India. Thus, the Indian Constitution was not an outcome of individual rights but the source of individual rights. Under these circumstances, the constitution has had a far more revolutionary role in India than it does in Britain and elsewhere.

The trias politica, or the separation of power model, as explicated in the Indian Constitution (IC), mandates the Judiciary to act as the final arbiter of IC and to act as a guardian and a watchdog ensuring faithful protection of fundamental rights. The popular imagination in India, built on the edifice of the three-legged knowledge apparatus of the academia, media and publishing establishments, sees the Judiciary as the fairest of the three arms of Government. While the legislature is understood to be made upon populist, inept demagogues, the image of the executive remains tarnished due to its inefficiency and

corrupt practices. Only the judiciary has managed to preserve its honourableness and the common citizen continues to retain some degree of faith in this institution, albeit with a few grievances of slowness, opaqueness etc. The battle for social justice and equality in our democracy, thus, is fought largely within the margins of judicial jurisprudence and popular representation.

Social Justice: Judicial and Legislative Interventions

To inspect closely the evolution of social justice in the Indian legal landscape, it would be fruitful to quickly run through the most important judicial and legislative interventions on the matter of Affirmative Action for Scheduled Castes, Scheduled Tribes and Other Backward Classes in the past seven decades.

The first time the issue of reservations caused visible discomfort on the judicial scene was immediately after India turned into the Constitutional Republic (the Brahmins lost little time in registering protest). In the State of Madras v/s Champakam Dorairajan case of 1951, Supreme Court (the judgment was written by Justice S.R. Das, a Baidya-Brahmin belonging to the Brahmo Samaj, and a pupil of Rabindranath Tagore) said that giving caste-based reservations was against Art 16(2).

In response to this judgment and entirely due to the efforts of Periyar and Dr. Ambedkar, the First Amendment Act of 1951 was passed, it empowered the state to make special provisions for the advancement of socially and educationally backward classes. It also added Ninth Schedule to protect this law from judicial review.

A decade later, in the M.R. Balaji v/s State of Mysore case, the Supreme Court (the principle argument was made by Justice P.B. Gajendragadkar, a Brahmin judge from a family of Sanskrit scholars, who after retirement carried forward his family's tradition in Vedanta and Mimamsa philosophy) said that caste may be a relevant factor to define backwardness, but it cannot be the sole or even the dominant criterion; poverty, occupation, and place of habitation may all be relevant factors to be taken into consideration. Further, it added that if classification for social backwardness were to be based solely on caste, then the caste system would be perpetuated in the Indian society. Backwardness, thus, may be defined without any reference

to caste. It also capped the maximum possible reservation at less than 50 percent; how much less than 50 percent would depend upon the relevant prevailing circumstances in each case.

It is important to note that despite the First Backward Classes Commission under Kaka Kalelkar having been set-up ten years prior to the Balaji judgment, it was neither referred nor adhered to. The Commission had defined backwardness on the basis of a) position in caste hierarchy b) status of education and c) representation in government services, trade, and industry. The question of economic backwardness was discussed in detail and shown to be the result and not the cause of social backwardness.

In State of U.P. V. Pradeep Tandon case of 1974, the Allahabad HC (the judgment was written by Justice T.S. Misra, a Brahmin zamindar who is also the father of BSP leader Satish Mishra) a new criterion to determine backwardness was devised, namely 'hill and Uttarakhand'. It was found that the absence of means of communication, technical processes and educational facilities kept the poor and illiterate people in the remote and sparsely populated areas backward. In Jayasree v. State of Kerala case of 1976 (written by Justice A.N. Ray, famous for upholding Emergency and the 43nd Constitutional Amendment Act), the income criteria officially entered the books and it was recognized that only those among the members of the mentioned castes, whose economic means were below the prescribed limit were socially and educationally backward, and the educational backwardness was reflected to a certain extent by the economic conditions of the group.

A paradigm shift in the fight for social justice came with the implementation of Mandal Commission Report, ten years after it had been submitted. It made way for a total of 49.5 percent reservation (22.5 percent for SCs and STs and 27 percent for socially and educationally Backward Classes) in public service. It took the Indian State another fifteen years to implement the report in higher education. But before the recommendation could be executed, the judiciary reviewed it under the Indra Sawhney v. Union of India case of 1993. The important takeaway from this judgment was its invocation of the Creamy Layer principle in determining reservations to OBCs. It also disallowed reservations in promotions; reiterated

that the 50% cap could not be breached except in extraordinary circumstances and that he carry forward rule in case of unfilled backlog vacancies was valid, but only within the limits of the 50% rule.

It mandated for certain posts to be excluded from reservations where the recruitment was to be strictly merit-based.

In response to these judicial invocations, the Indian Parliament passed a series of Constitutional Amendment Acts (CAA). The 76th CAA, 1994 included the Tamil Nadu Reservation Act of 1994 (which provides for 69 percent reservation of seats in educational institutions and posts in state services) in the Ninth Schedule to protect it from judicial review. The 77th CAA, 1995 provided for reservation in promotions in government jobs for SCs and STs. This amendment nullified the Indra Sawhney ruling with regard to reservation in promotions. In the 81st CAA of 2000, the 50 percent ceiling on reservation in backlog vacancies was broken. Further, the 85th CAA of 2001 provided for 'consequential seniority' in the case of promotion for government servants belonging to the SCs and STs with retrospective effect from June 1995.

The last round yet of the Legislature's teasing defiance of the Judiciary ensued on the question of reservations in minority and non-minority unaided private colleges. In Inamdar v/s State of Maharashtra case of 2004, the Supreme Court ruled that the state cannot impose its reservation policy on the aforementioned institutions. In response, the 93rd CAA, 2005 was passed that partly empowered the state to make special provisions for the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes in educational institutions including private educational institutions (whether aided or unaided by the state), except the minority educational institutions.

The quantum leap in the development of judicial rationale is said to be the Kesavananda Bharti case of 1973. Often hailed as the greatest innovation in India's judicial history, a case that saved Indian Democracy from the clutches of the populist legislature, and an invocation that has no rival, this case cleared the way for Judiciary to step into what has regularly been identified as 'Legislative Vacuum'. But the vagueness with which the Basic Structure Doctrine (BSD)

was outlined in the Kesavananda Bharti judgment has only bee compounded over the years, reaching peak arbitrariness when th Supreme Court struck down the NJAC Bill in 2015 by including th 'insularity and independence' of the judiciary under the ambit o Basic Structure Doctrine. The conventional debate on this matte has been understood as being between Judicial Activism and Judicia Overreach, but in the view of this author, it needs to be seen a Judicial Anxiety, Judicial Foreshadowing, and Judicial Preemption Pierre Bourdieu's use of 'habitus as structured structures' is perhap a good place to situate this preemption.

Reification of the Poor Brahmin Myth and the 10% reservation fo EWS Savarnas

The only thing more surprising to the keen, critical eye than th speed with which the 10% Bill was steamrolled through LS and R (with the willing support of so-called Bahujan parties, one must add was the sudden introduction of the Bill in the first place. But the ey is not so keen after all or all that critical.

The myth of the Poor Brahmin has been craftily curated throug various Brahmin channels – academia, media, publishing, civi society groups, NGOs, and at the most crucial level of executio – by the Indian higher judiciary. To that effect, this is a carefull constructed ignorance. From the Poor Brahmin in Vishnu Sarman' Panchtantrinamdaa installed in early history to his modern kin i Satyajit Ray's Apu Trilogy, a consensus has been manufactured tha the priestly class was either especially destitute or such destitutio was the norm. From eminent sociologists resigning over the questio of OBC reservations to media regularly running stories informing u that Brahmins were the new Dalits, the social reality of both our pas and present has been obfuscated to the point where it has becom impertinent to even question it. New fictions on Merit have been similar contrivance like the olden fictions on Karma. To add to it, celebratory tenor has been attributed to Merit, with 'rags to riche stories used to justify its certitude. But like Adorno had said, "In th end, glorification of splendid underdogs is nothing other than th glorification of the splendid system that makes them so."

Merit, as is conceived today, completely undermines th intersubjectivity in the processes of knowledge dissemination

knowledge assimilation, and knowledge reception, and most critically in the process of judgment as the fundamental act of knowledge.

The 124th CAB concerning this 10% reservation, formally introduced on Jan 7th 2019, came at the back of at least four decades of covert judicial propaganda and legislative vacuum. And just as the propaganda was slyly executed, the vacuum has been carefully curated – both reinforcing and reproducing each other. Given how the SC is a court of record and previous judgments act as a reference point and precedents for future generations, the legacy of legally-and-ethically unsustainable arguments on equality-and-justice have obliterated the primal arguments of Indian constitution and that of constituent assembly debates, the primal argument being that of 'Representation'. Dr. Ambedkar went as far as saying that 'a representative government is better than a merely efficient one'. Elsewhere, (non-Brahmin) Justice P.B. Sawant has noted, that "Article 16 (4) is not a poverty alleviation programme. Its singular aim is to redistribute power to those who have been kept out of the state apparatus so as to end their educational, social and economic backwardness and this class is not less than 77 1/2 % of the population of the country."

The Judiciary and the First-Past-The-Post-compromised-Parliament have made a complete mockery of the dialectical process, where synthesis of all apparently contradictory ideas is the Status Quo. Like in a symphony, the repetitions, and variations in this dialectical intercourse act in harmony, resulting in illusory (forward) movements. In truth, the legislature's disinclination towards social transformation affords fertile ground for the Judiciary to interpret inaction as an invitation to intervene. And every judicial pronouncement that follows offers the legislature an opportunity to posture as revolutionary while only maintaining the Status Quo. The Judiciary's reluctance to base its jurisprudence on solid empirical data is reflected in its visible disinterest in forcing the Government to publish the Socio-Economic Caste Census report of 2011. An agency with absolute powers to dispense justice can surely do with vital numbers on socio-economic materiality, given how there is a dearth of data in India in general.

The Indian Judiciary seems light years away from the kind of judicial

logic and brevity used by Earl Warren when he declared that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

Uttarakhand and Identity: Conflation and Contradiction

The case of Uttarakhand should serve both as an introduction to the farcical 10% Bill and a barometer for how things may unfold in the near future.

The Jaunsar-Bawar region, formerly of the Sirmur (Nahan in present day Himachal Pradesh) state, lies in the northern part of Dehradun district. In 1967, the entire region was designated as a tribal area, making its entire population eligible for benefits under the Scheduled Tribe category. In truth, the Jaunsari society is as caste stratified as any other part of India, with the majority of Dalits being landless. Unsurprisingly, most of the seats reserved under ST quota are hogged by Brahmins and Rajputs. The Dalits here suffer on three counts- the rigid and vulgar hierarchy is at full play with bonded labour practiced even to this day, they are unable to compete with Savarnas both electorally and for jobs and admissions, and worst of all they remain ineligible for the SC status since law recognizes the area as homogeneously tribal.

But far more fascinating than this absurdist 'tribal' construct is how it was established legally. While some of the early blame for it must be shared by the British anthropologists who identified the whole population as one 'Khasa' race, most of the concoction happened in 1967 when Brahmin and Rajput MLAs from the region testified before a committee that on the basis that - 1. the wide-spread practice of polyandry which was symptomatic of a 'tribal culture' 2. absence of untouchability in the present and 3. the otherwise unheard-of tradition of Rajputs taking loans from the ex-untouchable Kolta community - the whole region be termed 'tribal'. These white lies were packaged well and the committee approved.

Since 1969, multiple petitions to the High Court and Supreme Court and many a resolution to state and central assemblies have been filed objecting to this farce, but to no avail.

The absurdity doesn't end here. Last year, Brahmin gentleman 1 filed a case against Brahmin gentleman 2 in the Nainital HC citing th

latter's unfounded allegations of corruption. The case was registered under PoA(SC/ST)1989, to which Brahmin 2 responded by filing a case in return against Brahmin 1 for falsely using the ST identity, to which Brahmin 1 promptly produced his Jaunsari domicile. The HC ordered Brahmin 2 to pay Rs. two lakhs for perjury, him being a lawyer. Brahmin 2 took the case to the Supreme Court where it remains pending. Another matter of irony is that Brahmin 1 is the head of Uttarakhand State Commission for Scheduled Castes and Scheduled Tribes.

All of which makes two things clear. One, the 'legal' use of ST category for the benefit of reservations has been extended to other areas, such as in invoking of PoA,1989 (it is wholly possible and imminently probable that soon Brahmins in Uttarakhand will be using PoA against OBCs). Two, both the State and Central assemblies, and the HC and SC are aware of this theatre.

Since 2000, the year when Uttarakhand was carved out of UP, the stage of this theatre has encroached the OBC category- which is both baffling and predictable. The birth of the Uttarakhand movement can be traced to the anti-Mandal protests in the Garhwal-Kumaon hills of Mulayam Singh Yadav's UP. The Savarnas argued that 27% reservations for OBCs in the hilly regions, which in their estimate had less than 3% OBC population, was unfair. Tensions escalated throughout the 90s and the anti-OBC movement was subsumed by the movement for separate Uttarakhand state. The inclusion of Haridwar in the new state raised the OBC population to 14% according to state estimates, and to this day the state reserves less than 14% for OBCs. Since 2000, a curious practice has taken roots. At regular intervals, large swathes of hill districts of Pithoragarh, Uttarkashi, and Chamoli have been declared as OBC-hills, making the entire populations of these areas eligible for reservations under OBC category. While the Jaunsar-ST experiment has been faithfully replicated, the last few decades have seen bizarre demand for the extension of OBC reservation for the entire hilly region of Uttarakhand, both inside the assembly and the HC.

It is beyond doubt that this unsubtle governmentality in affording reserved ST and OBC status to Brahmins and other Savarnas is a sign of things to come. The entire thrust behind women's reservation and

reservations based on economic criteria is to undo the little gains th Bahujans have made since 1950. As the recent furore in Maharasht has shown us, the judiciary is seriously contemplating both defangi and diluting PoA(SC/ST) 1989. The net effect of all this would be officially usher in the pre-constitutional era and gradually lead back into the Vedic times, where Manusmriti will officially repla the constitution. These developments in Uttarakhand and the 124 CAB must thus be seen as the thirteenth Adhyay of Manusmriti.

To conclude, it would be useful to go back to the beginning this essay, and understand the potent difference between causa ordered systems and complex adaptive systems.

"...complex adaptive systems don't have causality, they hav dispositionality. So at any one stage, you can say the system disposed to behave in this way, but you can't [reliably] predict that will." - Dave Snowden

The caste system is a complex and dynamic system. The ruling an governing class consisting largely of Brahmins of all hues, saffron red, is adept at the art of co-optation, appropriation, and placatio It revels in distorting Bahujan revolutions into a theatre, in defangi insurrectionary anti-caste figures like Buddha, Kabir and ascribi neutered, ideologically irrelevant margins of nationalism an secularism around them. It thrives by consistently mis-attributi and over-determining the religious, social and cultural aspects caste, invisibilizing its economic nature, so that it could theori Marx using empty class-signifiers. By deflecting attention fro structural factors like endogamy and building vile constructs suc as dalit patriarchy, it constantly engages Bahujans in futile battle By projecting affirmative action as a poverty-alleviation progra and not as rightful (proportionate) representation, it perverts th constitutional designs for social justice. The Brahmin ruling clas spread across Judiciary and Polity at all levels- needs to be recognize for what it is, a supremacist breed of parasites predisposed appropriating Bahujan labour. To expect equality and justice fro this breed, in the words of Pauli, would be 'not even wrong'.

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WE HAVE 'JUDICIARY IN INDIA' AND NOT 'JUDICIARY OF INDIA'

Sthabir Khora

(Transcript of his speech at the 'Discussion on the Constitutionality an Progressiveness of the EWS Quota for the so-called Upper Castes an the Repercussions for the SC/ST/OBC/Pasmanda Representation' hel on 25th of Feb, 2019 at the Mumbai Marathi Patrakar Sangh, For Mumbai.)

Jai Bhim to all, Jai Bhim.

The Honorable Mane sir, Kuffirda, James, Rahul. I am very thankfu to all of you who have come. I am very thankful to the organiser who have given me a place alongside Mane sir. It is not easy to tal here as he is well versed on the topic. But I will just present m opinion; and some of it might go well and some of it might not.

This current 10% reservation is for the EWS category. This EW category was first created in Right to Education. It's very interestin that the EWS category in Right to Education implied SC/ST thoug technically it didn't. But here it is just the opposite: here it look like it is for the savarna. What I feel is that it has cleverly mixed tw things - one positive thing and one negative thing - and it is trying t present a Catch 22 situation. A googly type of situation for SC/ST OBC, which if you take there is problem and if you don't take als there is problem.

Why this has been done? According to me, those who do politi are not fools and they know that people cannot be fooled easi

and therefore they will combine the positive and negative thing to create a dilemma for the people. What is the positive here? This is crossing the 50% ceiling. This is the ground on which it is sold politically. The negative thing here is 'exclusive economic criteria as a basis of reservation' which is negative, dangerous. These two have been mixed and presented. Now there are articles which are coming up about this. People who see something positive in it discuss about the positive aspects. Of these, the first positive aspect is crossing the 50% ceiling. People feel that since it is given to the upper castes the Supreme Court will not oppose it and allow it to pass. If at all it is allowed, obviously the OBC will be happy thinking that, now we will get more than 27% reservation. Ok, this is based on the assumption that you have allowed (savarnas) there, so you will allow (us) here. Whichever Bahujan leaders supported this, if they are asked why did they support, they will say that, this is why we supported it - to break the 50% ceiling and to get some benefit from that.

But you cannot pick and choose between two components. You have to take it in total. If it is passed then both get passed. It will cross 50% ceiling as well as (bring in) reservations based on exclusive economic criteria. You cannot take them separately. What will the Supreme Court do? I will try to guess about what the Supreme Court is likely to do.

Benefit number two, which some people are saying is that, the stigma which has so far been with reservation will lessen. I think the stigma was never attached to reservation. The stigma upon the SC/ST was not due to reservation but because of their low caste. This is my sociological guess. And why do I think so? It's because if reservation were to remove stigma, the total SC population would have considered themselves as one single unit. There would have been SC, ST, OBC Unity. There should not have been internal division, internal hierarchy within the SC if reservation where to remove stigma. If we imagine, are those Brahmins who will come under 10% quota going to face stigma? I don't think so. Therefore, I don't agree with those who are writing that this will remove the stigma. I don't think so.

What is the strategy for people who are advocating resistance to this if they think this is not right? I will call it the strategy of logic and

fact, meaning you will apply the logic and you apply the fact. Fact i known to everybody that how much upper castes are represented i public and private sector. This fact is widely well known. This must b known to the Supreme Court because in Nagaraj judgement it wa reiterated that you have to prove quantitatively (representation). Bu what percentage of people are in A, B, C, D category of employmen - this was always known. I am from Sociology background an I don't know so much about the law. But I don't understand wh reservation in promotion was not defended presenting these facts I don't believe that the strategy of fact alone will work. In revisio petition people will provide fact and logic.

Strategy of fact and logic will also not work, I feel, because the Cour can give judgement without any fact or logic and we have examples For example, we have this creamy layer judgement in promotions. could never understand how you do not apply creamy layer at th entry stage but apply it during the promotion stage! How it was no relevant what the father was doing during the entry stage but wa relevant during the promotion stage, while his own status shoul have been relevant! When we want to see income limit, what d we see - what he is doing as an adult. Then we delink his incom from his father's income. For example, when a girl leaves home afte marriage, her father's income may be crores. But that is never counte as her income. That woman's income will be linked to her husband' income. Therefore for a person, after joining a job, his income is cu off from his father's. He or she is an independent person in his o her own right. Then how come Supreme Court is bringing his or he father in, at this stage (promotion)! And nobody can ask the Suprem Court, how can you do this.

For example, this Mahajan case (Dr. Subhash Kashinath Mahaja vs The State Of Maharashtra) regarding the filing of a false atrocit case. Here the police has decided it is a false case. And whateve police decides, that is not supposed to be admissible in the court. O the one side the court judgement and on the other side the polic judgement and the statistics which were presented combining thi two is totally illogical. But you cannot question. Therefore, I believ that strategy of logic and fact also do not work. We have see enough of that. It is said that technical ground cannot be an obstacl to justice. For example, 482 of the CRPC which can cancel a FIR

basically an extraordinary power, which means technicalities doesn't matter much before justice. In the recent judgement regarding Adivasi eviction where central government had not sent its lawyer, the Supreme Court could have always waited; should have asked the central government to bring its lawyer. It could have done so many things. It was not so necessary technically to give the judgement in the absence of the lawyer just because the lawyer didn't come. But Supreme Court has done it. So, I don't think strategy of fact and logic will work much.

And now what is the real issue? I don't think that real issue is logic, fact, Parliament, Lok Sabha or Rajya Sabha. How long will the Supreme Court keep on giving such judgments and how long will these revision petitions and ordinances go on! The problem, I feel, is the lack of an inclusive judiciary, the root of the problem for SC/ST/OBC. I feel, we have a 'Judiciary in India' not 'Judiciary of India' because judiciary doesn't have any link with the people. Technically, here the Judiciary appoints/selects itself. Judicial independence is what it is called here. There was an article in The Wire yesterday or day before and that was supporting the present system of independence of judiciary. A lot of people support independence of judiciary and a few oppose. What is after all this independence of judiciary? This is the issue in that article in The Wire.

It was written that if the collegium recommends something to the government and the government returns it and the collegium recommends it again then the government has to accept it and that is the law. This type of thing is written in the constitution regarding the exchanges between the President and Council of Ministers and Prime Minister. If Prime Minister along with the Council of Ministers send something second time after reconsideration to the President then the President is bound to accept that. This means that because it's a democracy and because the Council of Ministers are from the parliament which is directly elected that's why their power has to be more than that of the President. So, Council of Ministers are more powerful than the president. President technically appoints the judges. But Council of Ministers have to obey those judges. This has become some sort of contradiction. I don't know whether any scholar has defended this collegium system. I don't know whether this exists in other countries like UK or USA from which we derive

our legal system. If it was good for democracy then it would hav been there in UK or USA also. Then why it is not there?

Judicial independence is defined in India as judges appointin themselves. But I don't think that this will be the meaning jurisprudence. The second thing which is presented is that judici independence is a virtue in itself like there is in philosophy th conception of 'good'. Platonic 'good', is an abstract concept. Wha is good? Everything is good. It's a virtue in itself. 'Liberty' - virtue itself with some limits. 'Freedom' - virtue in itself with some limit Even if independence is looked at like that then also it will have it limit. What is its limit? We have to see that.

Actually, in jurisprudence it is not accepted that independence is virtue in itself. Independence is required for impartiality. If someon is not independent then he cannot be impartial. Independence is no a virtue in itself but is required only for impartiality. Like it is said tha 'justice is not only to be done but seen to be done' - that's why ope courts are there and not secret procedures. Similarly, impartiality also not only to be done but seen to be done. What happens the collegium system is not transparent. Then how do we know is impartial? How do people know that that is impartial? This is wh I think that what we have 'Judiciary in India' and not 'Judiciary India'.

Finally, we come to what next? The system is operating in such manner that today the Judiciary is ordering the eviction of lakh of Adivasis and people are not thinking beyond a revision petitio And openly you cannot say that you will not obey the Suprem Court because then you will attract contempt. So, this is the kind situation we have. The revision petition and such things are a strateg of logic and fact. I feel that SC/ST/OBC should exert their full energ on an inclusive judiciary. They can go to international forums. Fo example, the recent eviction judgement of 10-20 lakhs of Adivas from their homes is like genocide. UN charter and sometimes th international community intervenes in the matter of genocide. Th is that kind of situation. So, one thing is internationalisation of th problems which we are encountering because of lack of inclusiv judiciary. The second thing is about different movements whic have so far employed centralisation as a strategy. All the people a

trying to assemble in Delhi and then try to do something in Delhi. That is one strategy. Ok, that's fine. But if there is some amount of decentralisation then I think the cost will be less. I always think about cost-benefit approach to social movements. We should do peaceful constitutional representation, some movements or whatever the constitution allows before state High Court or even District Court for an inclusive judiciary. And the District Judge will forward the demand to High Court. This can be a decentralized social movement which is my suggestion.

HOW WILL THE BAHUJAN RESPOND TO THIS COUNTER-REVOLUTION?

THE BAHUJAN HAVE A COMMON ENEMY

Naren Bedide (Kuffir)

(Transcript of his speech at the 'Discussion on the Constitutionality and Progressiveness of the EWS Quota for the so-called Upper Castes and the Repercussions for the SC/ST/OBC/Pasmanda Representation' held on 25th of Feb, 2019 at the Mumbai Marathi Patrakar Sangh, Fort, Mumbai. Transcribed by Vinay Shende.)

Thank you. Jai Bhim. I have listened to all the speakers. They have all made very good points. I would like to briefly refer to some of them. There is not much time to speak more. Will start with what Prof. Sthabir Khora said, that facts and logic probably won't make any sense to this judiciary. There was this piece of satirical writing by Philip Roth in the 70s. He referred to the ultra-conservatives in the Nixon regime. Nixon was referred to as 'Tricky Dick'. They had created a new language (to suit their ultra right ideas). So they used to speak about the rights of the unborn. Here we are speaking of the 'poverty' of the Savarna, and as Mane sir said, something that doesn't exist. The unborn have rights but those who are alive don't have rights. The actual poor don't have rights.

The problem with Indian politics and sociology is that we believe some classes are socially and educationally backward but they are not stigmatized. But where in the world is a poor man or socially or educationally backward man or a class or a group loved by the rest of society? There is a stigma attached to most of the backward classes

as it is to the Scheduled Castes and there is a special kind of otherin of the Scheduled Tribes. Let's not group them together but let's no forget the fact that Indian sociology is very very deficient. We forge the sociology of those who control Indian political science, and w keep assuming that this class will remain the same. Babasaheb an Marx said that things will change. They both said that change is th only permanent thing in the world. So this political class which ha become a kind of common sense to us represents a certain kind o people (Brahmins and other upper castes) but we don't see them a a class of people or certain caste/s of people. We have to chang this, we have to change this political class.

In Indian parliament (Lok Sabha) right now, around 230 seats ar occupied by the SC, ST, OBCs. 131 seats are reserved for SC/STs OBCs obtained some 99 seats. Among these OBC seats there woul be around 20 castes represented, out of a total of around 2500 OB castes. So this is still a minority: 230, and we (SC, ST, OBCs) ar supposedly the majority outside. But the actual majority in India parliament is around 310-320 upper caste occupied seats, purel upper castes across religions. But we still look towards the parliamen to behave in a much more sensitive fashion than the judiciary. Th independence of the Judiciary & social sensitivity of the Parliament both are big jokes, they don't exist. We keep believing it, era after era But as Mane saab says, in essence, in certain cultural habits, way of articulation & rhetoric, the political class doesn't change. But th environment around them changes. I have a whole list of data which shows that until now in the parliament we have 35% representatio of SC/ST/OBCs (and less many times, since the first Lok Sabha). Thi is the first pillar of our democracy. In the executive, we have 35-40% representation, much less most times. Not just in the Union Govt but also in the State Governments, our representation is less. Onl nine State Governments out of 30 are run by OBC Chief Ministers There is no SC or ST Chief Minister now. Twenty of them are run b upper castes. In the Centre, most Ministers are Brahmins, especiall in the key portfolios, along with other upper castes. So this is th parliament, this is the executive.

When it comes to the Judiciary, it is God's own divine secret: what i its composition? We see that lower judiciary has 30% representatio or so of the SC/ST/OBCs. We don't know about the Supreme Cou

and High Courts, they need not pay any attention to your RTIs or any other appeals. They don't have to answer anyone, any citizen. They are outside the realm of accountability. So this is the third pillar, judiciary.

The fourth pillar we know. There have been two surveys, one in the 90s by BN Uniyal and then in the 2000s by Yogendra Yadav and others. Both have proved that SC/ST representation is near zero in National Media - Hindi & English. The OBC representation is around 3-4%. This is a fact that has not changed much. In fact, if there was objective research on what was the position of OBC representation in Central Government before the Mandal commission was promulgated, you will find that their representation has actually come down now. It has actually come down and their position is much more backward. In Public Sector Undertakings (PSUs) and Banks, their position is a joke actually speaking. The SC/ST positions are mostly in the Group C & Group D positions & posts.

So we are at this position and we can't say politics should remain static. Even if it is static for the last 30-40 years, we can't allow it to remain so. That would be very cynical of us (SC/ST/OBCs), you have been hit on the very spot where you live. This is the existential question. This might seem like, as Dhobley sir said, we seem to believe as common sense that there is a poor brahmin. The Bahujans are so generous that they will give anything for the poor brahmin and not do much even for their mothers, parents, and children. So this brahmin blindness and this generosity are so internalized that somehow we naturally tend to be generous, be liberal, be very considerate towards the upper castes. Where I come from (Telangana), we were not so very considerate and we followed a different path (during the Telangana Armed Struggle). Babasaheb clearly said, even when he was formulating the Constitution, and this is a very radical argument, he said when he was presenting the Constitution to the Parliament, "The principal aim of such a constitution must be to dislodge the governing class from its position and to prevent it from remaining as a governing class."

This is very clear to me. And he referred umpteen times to the Brahmins as a Governing Class. We talk of 60-70% of Parliament, Central Govt Services occupied by the upper castes, but that is only

partly right, it is mostly occupied by the brahmins. One friend told me that a Maratha acquaintance told him that this is a brahmin quota, he didn't say it is upper caste quota. You see, they understand it quite plainly, the Patels, Marathas and the Kapus also understand it. The Jats also understand that this is going to be the brahmin quota. And like Mane Sir and Dhobley sir have clearly pointed out that jobs in the organised sector, which are the most prized jobs, which had a certain kind of security earlier--that has all disappeared. But despite that, you get a regular salary every month and that ensures 30-40 years of livelihood if you are in the Government service. In PSUs, you don't know, you can be removed as well. There is no more security. It shouldn't be called organized sector anymore. The private sector is another story, you can be retrenched in thousands. Despite that, the key question is not employment for the upper castes. They don't want employment through it. So what do they want?

As I keep saying, the Marathas own 80% of agricultural land in Maharashtra, the agricultural land. Patels own 60-70% in Gujarat, Jats own 70% Punjab, Haryana. The Gounders (and other dominant castes) who were the cause of this 69% reservations in TN also own substantial extent of land there. They were removed by the Backward Class Commissions earlier from the list of Backward Classes. The Marathas' appeal was rejected by the Backward Class Commissions. Same situation in Maharashtra, Tamil Nadu, and Karnataka. The Backward Class Commissions are hardly ever listened to. The Reddies and Velamas own 70% land in Telangana. The Kapus, Kammas, Reddies and the Rajus own 70-80% land in Andhra Pradesh. In every state, 2-3 castes own the biggest chunk of land. And they are not doing much with it. This is the root of the material stranglehold of the upper castes on Indian society. I was just listening to a news program in Andhra, if there are 2500 acres in a village, only 700 acres belong to the actual tillers. The rest of the 1800 acres are again tilled by the tenants. They are mostly OBCs and Dalits now. That is the position of agriculture in India. 90% of these people are tenant farmers because they own an acre, they take 5 more acres on lease, they suffer losses and they die. Their death and their distress are guaranteed. That is the only thing that is permanent.

The point of the upper castes still retaining that land in the villages

especially in the highly educated southern states, where literacy levels are very high (in Andhra especially), and Kerala, Tamil Nadu, Karnataka needs to be looked at closely: why do these upper castes retain the land? Why do the Nairs retain the land in Kerala? Why do Reddies, Velamas still retain land in Telangana? Because the point of caste is that, the upper castes own something that you will never own. His own cultural and social status depends on his owning something, even if it is 20 acres of land which is fallow, but you guys don't have any land and that is his pride. That is what ensures his status. So that is also why they don't want us in this kind of permanent, secure jobs which would make them feel that we have moved into modernity very suddenly, from the middle of tilling in the fields, from doing artisanal work, from doing all kinds of impure work, which even if we are the best of craftsmen, even if we are scientists (as Kancha Ilaiah keeps saying), it doesn't work (in elevating our status). Only if you wear a suit or a tie and you go to a factory or sit in a government office, only then you are supposed to be modern. (I keep saying that the Bahujan woman was the first mathematician in India. She discovered zero when she was planting rice saplings in a row.) We have internalized this hierarchy in our mind. But the brahmins and other upper castes know quite well that it doesn't matter to them even if they get any new jobs through this 10% quota or not. What they want to ensure is that you don't enter into these 'modern' spaces!

In universities, especially central universities--this is from the status of All India Survey of Higher Education Report (AISHE) from 2 years ago--only 23% students are from SC/ST/OBC. And these figures, all Government of India figures, hide a lot. Giving the benefit of doubt, we can say that at best we are 20 percent in Central Universities. This is our students, not the faculty. The faculty is 95% Brahmin-Savarna. So 20% students who are SC/ST/OBC get to enter these IITs, IIMs, etc. These upper castes want to add another 10% to their own quota, the 'General Category'. As James Michael said, it is savarna quota, it is not distributable. It is an unwritten law, but as good as a written one on stone, that the 50% General Category belongs to the upper castes. Across South India and in other places, now the cutoff criteria for SCs and OBCs are generally higher than that of General Category. So they don't want us in these Central Universities. To stop even the

20% of SC/ST/OBC inflow into the Central Universities, they hav to bring in this 10% EWS. And our students by default--we are a poor, we can't go to any private universities. So private universitie are being manufactured to give employment to upper caste scholar And they will give direct employment to upper caste scholars wh earn their PhDs outside the country. So this is a kind of ancient spit This is about social status and not about neo-liberalism or whateve India follows this caste mode of production wherein upper caste have to control all kinds of means of production, whether it is th bail-gaadi or the nuclear reactor. And they have to control all kinds consumption also. We, Bahujans, might produce the best of basma rice in the world but 99% of it is consumed by the upper castes. W might produce the best of spices in the world, but it is the uppe castes who have to consume it.

This (10% EWS) is a kind of a watershed event, much more watershe than when they turned Mandal into a joke. Now they have turne the whole Indian Constitution into a kind of a dud argumen You can't base your politics purely on the basis of legalities an technicalities. Let's go back to the basic idea Babasaheb referred t when he inserted these words 'Liberty, Equality & Fraternity' in th Indian Constitution. Let's go back to these basics. The Preamble t the Indian Constitution says 'We, THE PEOPLE OF INDIA, havin solemnly resolved to constitute India into a SOVEREIGN SOCIALIS SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizen JUSTICE, social, economic and political'. Now this is impossible.

JUSTICE, social, economic and political: when 90% of the judiciary upper caste, then how is this possible? And it is not in isolation. Th composition of the Parliament, the Executive and the Media agai will ensure that the Judiciary will remain only this, only upper caste

'LIBERTY of thought, expression, belief, faith and worship; EQUALIT of status and of opportunity; and to promote among them a FRATERNITY assuring that...' What kind of Fraternity will be ther when my Brahmin friend's father is a High Court Judge and mothe is the Chief Doctor in the best Government Medical School and h brother is in Silicon Valley, California whereas my father and mothe didn't even study second class? Is it natural to expect fraternity fro people who are so very superior to you, if you can consider thes

kinds of things as marks of superiority. If they have crores and you have only thousands and you have to look for your wages every day, what kind of similarity, fraternity can be there between these kinds of people? What are we expecting?

There needs to be a rethinking, again going back to Babasaheb, asking what do Equality, Liberty and Fraternity actually mean. And we want them. So there is a need for SC/ST/OBCs to come together to fight. There is a common enemy. He occupies 70-80% of the best of positions, opportunities and material resources in the country and controls the best of the modern institutions which produce the most wealth. And also consumes the most wealth. So there is a clear enemy, the upper castes headed by the brahmin. You do whatever you want to, but don't pass this off as a normal kind of politics and normal kind of justice issue or normal kind of legal issues.

Thank you. Jai Bhim!!

10% EWS AND THE EDUCATIONAL RIGHTS OF PASMANDA AND BAHUJAN CHILDREN

Naaz Khair, interviewed by **Anu Ramdas**

Anu Ramdas: *What is Right To Education (RTE) for the Bahujan an Pasmanda people?*

Naaz Khair: The Constitution of India that came into force in 195 mandated the State to provide free and compulsory education t all children aged six to fourteen years. However, the provision wa made in the form of a Directive Principle of State Policy viz. Articl 45, which was not enforceable by the Courts. Thereafter, it took ove five decades before education for children became a Fundamenta Right via the 86th Constitutional Amendment, in 2002. Durin this period, there were intense educational movements, global an Indian, and child rights campaigns. The UN Child Rights Conventio identified education as one of the many child rights, the World Ban and European Union, etc, guided the process of educational reform within the country, there was the abolition of child labor, and s on. Vide the 86th Constitutional Amendment the Right to Educatio (Article 21A) was made part of the Fundamental Right to Life (Articl 21). The Fundamental Right to Education achieved in 2002 becam a reality with the passing of the Right to Education Act in 2009. Th Right to Education (RTE) Act, 2009 laid down the provisions fo implementing the Fundamental Right to Education guaranteed b the Constitution.

The RTE Act, 2009, came into force on the 1st of April, 2010 an was widely celebrated as it signaled an end to discrimination i education. All children in the age group 6 -14 years irrespective o caste, creed, gender, ethnicity, disability etc became equal for th

purpose of education. All social, traditional and historical grounds for limiting education only to certain sections/groups in society were removed. In other words, all barriers to education were removed. This was a significant development for Bahujan-Pasmandas (SC/ST/OBC and Pasmandas) battling historical deprivation in the field of education.

In 1961, while for the total population the literacy rate was 28.31%, it was 10.27% and 8.53% for SC and ST respectively. In 2011 (close to the year of enactment of RTE Act, 2009), the figures were 74.04% literacy for the total population and 66.07% and 59% literacy for SC and ST populations respectively. Pending OBC caste census there is no literacy rate available for OBC from census data. However, according to a paper produced by Surjit Bhalla, on the index of educational attainment, OBC was 7.1 in 1999 which increased to 10.7 in 2011. Within OBC, the index of educational development for OBC Muslims (Pasmanda) was 6.3 in 1999 and 8.4 in 2011. The paper concluded that in 2011 OBC Muslims were lagging far behind the average OBC and were behind all other OBC sub-categories (Christian, Hindu and Sikh) and were only marginally better off (by 0.3 points) than SC/ST in educational attainment.

So, even after massive educational expansion and educational reform measures since independence, social category gaps in education continued to show. The RTE Act, 2009 held out a promise of systematic bridging of all social category gaps in education in the near future. However, the post-RTE period has only seen the systematic dismantling of the educational rights of children. Child labor (consisting predominantly of bahujans and pasmandas) has come back with the President giving his assent to the Child Labour (Prohibition and Regulation) Amendment act, 2016. The proposed New Education Policy, 2016 goes off on a tangent instead of focusing on measures for effective implementation of RTE. While less than 10% schools are RTE compliant (compliance to RTE norms and standards), government schools are closing around the country and privatization of school education (proliferation of education shops) is taking place rapidly. Key RTE provision of non-detention at the elementary stage has been scrapped through a recent amendment of the RTE Act. Non-detention was an important provision, which was seen as a boon for children from excluded communities (SC/ST/OBC/Pasmanda) as it checked their dropout from school. Dropout (generally high) of SC, ST, OBC, Pasmanda children is

quite unavoidable given their historical exclusion from educatio
Ill-equipped as they are, becoming familiar with the rigors of th
schooling process run by an education administration and teachin
faculty dominated by upper castes (savarnas, ashrafias, etc) wa
going to take some time. And, therefore no detention served thei
interest a lot. Given the aforesaid, the right to education as a huma
right and fundamental right is severely under threat with cripplin
impact on Bahujans!

Anu: *How is RTE visualized with the reservation policy for SC, ST an*
OBC communities?

Naaz: RTE Act, 2009, provides for reservations in the context o
un-aided private schools and specified category schools (Kendriy
Vidyalaya, Navodaya Vidyalaya, Sainik Schools and others that ma
get notified as specified category schools). Article 12 (1) C of th
Act makes a provision of 25% reservations in class-I or pre-primary
whichever is the first class, for children belonging to weaker section
(EWS) and disadvantaged groups (DG) i.e. 25% of students in class-
or pre-primary, whichever is the first class must comprise of EW
and DG children. The Act, however, does not define the EWS an
DG categories.

States across India have defined EWS and DG variously. Th
reservations are not confined to caste categories SC/ST/OB
and EWS alone. Some states have included orphans, HIV positiv
children, homeless children, disabled children, children of widow
of army-men and handicapped parents, etc, under EWS and DG
Karnataka, for instance, defines 11 categories eligible for 25% RT
(EWS and DG) reservations. While most of the states mention EWS
SC and ST upfront for coverage under Article 12 (1) C, mention o
OBC is not found uniformly across states under the Article. Odish
covers children of manual scavengers, homeless children, stree
children and beggars etc under 'educationally and socially backwar
instead of OBC as one would expect, under Article 12 (1) C.

Other examples of coverage under Article 12 (1) C: A numbe
of states mention castes under EWS e.g. Karnataka and Punja
However, Punjab does not place an income limit for SC admission
Maharashtra covers OBC and SBC under EWS. Rajasthan covers SC
ST, OBC, and SBC under EWS, with income limit. Tripura covers onl
BPL SC, ST, and OBCs under DG. Meghalaya covers SC, ST unde
EWS. Jharkhand covers SC, ST, and minority with income limit an

so on and so forth.

There are key issues affecting proper implementation and monitoring of RTE provision: Article 12 (1) C including fake income and caste certificates, difficulties in making income and especially caste certificates, high dropout rate of children admitted under RTE quota, non-availability of category-wise and sub-category-wise disaggregated information relating to admissions under the RTE quota and by 'specified category' schools (details of RTE admissions under each specified category school viz. Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik Schools, etc. Within unaided private schools, Minority unaided schools are exempt under Article 12 (1) C of the RTE Act.

Anu: *Do you see the RTE as the precursor discourse of 10% EWS?*

Naaz: SC, ST and OBC reservations is a hard-earned gain of the anti-caste struggle. The casteist forces have opposed and interfered with their effective implementation of the right since the beginning. These forces cannot and have never conceded anything to the peoples that have been their subjects/made their subjects by caste historically. At every level, day to day, policy-making and implementation evidence suggest caste discrimination and oppression despite constitutional safeguards.

The use of economic criteria instead of sub-categorization is nothing but a divisive and casteist strategy coined by the savarnas/ashrafias (and upper castes of other religions) to weaken SC, ST, and OBC as a majority community. The economic criteria were first implemented under OBC reservations by introducing the concept of the creamy layer and in the discussion, above we find that the economic criteria have been applied on SC and ST also, along with OBC, under 25% RTE reservations. So, there has been a dilution of SC, ST and OBC reservations preceding the 10% EWS quota. The 10% EWS quota has no 'oppressed caste' connotation to it, rather it provides reservations to the ruling section of the population.

Anu: *What is the state of Pasmandas' access to education and employment and how do you think 10% EWS will impact them?*

Naaz: The term Pasmanda (which means those who have been left behind) is used for both OBC and SC, ST Muslims. Dalit Muslims do not as yet enjoy SC status under the Constitution due to a discriminatory provision under Article 341 of the Constitution that

keeps them out of the Scheduled Caste list on grounds of religion According to a report prepared for the National Commission fo Minorities, in 2004-05, almost half the dalit Muslim population i the rural areas was not literate (48.8%), almost like it was for dali Hindus in rural areas (48.53% illiterate). The not literate amon OBC Muslims in rural areas was slightly better at 47.36%. In term of Pasmanda access to employment, Khalid Anis Ansari, Pasmand commentator and Professor at Glocal University has argued in hi researched works that pasmandas are highly underrepresente in public employment whereas the Ashraf section of the Muslin population is over-represented, in at least four out of six sectors o public employment identified in the Sachar Committee report (Centra Security Agencies, Railway, Central PSU, SPSC Recommendation fo selection, University Faculty and University-Non Teaching).

The application of economic criteria to SC, ST and OBC admission under the RTE quota in many states and difficulties associated wit obtaining caste certificates and caste prejudices in general mean more and more SC, ST and OBC have to compete in the open category after the 10% EWS quota has seats reserved for upper castes bu not for SC, ST, and OBC. Media reports based on RTI finding show that upper castes have a monopoly over general categor admissions and employment. Minority institutions are exempt from RTE reservations. Further, Pasmanda activists have been demandin reservations for pasmandas in Muslim minority institutions includin Muslim minority higher educational institutions. Aligarh Muslim University is a case in point.

ONLY POLITICALLY MOTIVATED OBC-DALIT GROUPS CAN PREVENT SCUTTLING OF RESERVATIONS

James Michael

(Transcript of his speech at the 'Discussion on the Constitutionality and Progressiveness of the EWS Quota for the so-called Upper Castes and the Repercussions for the SC/ST/OBC/Pasmanda Representation' held on 25th of Feb, 2019 at the Mumbai Marathi Patrakar Sangh, Fort, Mumbai. Transcribed by ***Sundeep Pattem****.)*

Thank you all for turning up. I would also like to extend my warm welcome to the distinguished guests, especially Suresh Mane sir, and also Kuffir da who came all the way from Hyderabad, and other people. I'm no constitutional expert or a legal expert, but I would like to talk from my experience during my days as a university student. I joined this place called Central Institute of English and Foreign Languages, which later became a central university. So, I happened to be at that place when it was transitioning into a central university. It was at the same time that the second Mandal was also happening. So I could see what was happening during the pre-Mandal days as well was what was happening during the reservation debate and after that. During my days in the university, before the Mandal era, there was a dalit bahujan minority adivasi students association, which was called DBMSA, which was formally there but it was not very politically active because during the pre-Mandal days, as you know, the university space was dominated by upper caste students, plus there were a few SC/ST students because the SC/ST reservations were there. So, there was a smattering of SC/ST students plus upper caste students. After the Mandal reservations, a lot of OBC students started pouring into the university and then DBMSA suddenly got a new energy and vigor. Before DBMSA was

active, we had a students union called the 'Participants Association' which was again dominated by upper caste students. To be part of this association, you had to pay money. To cast vote also you also had to pay money. When DBMSA decided to contest elections, it challenged this elitist students union. There was a small struggle and it managed to make elections into a free and open affair. So, in a sense, in a microcosm, I could see a minor efflorescence of democracy, in a manner of speaking. You know that during the 19th century in European countries only the propertied classes were allowed to cast the vote and others only later. It was something of that sort which was happening in my university as well.

So much for the background. When we come to the question of reservation, as you know, once the Mandal reservation was established, 50% was for OBC/SC/ST students and the rest 50% was understood as general category. So, what was happening was that reservation policy in the university was being scuttled. The primary way for scuttling reservation was to interpret general category as an upper caste category. So, there was a situation where OBC and SC/ST students would get marks that were more than the general category cutoffs, but they would still be given admission in the reserved category. This was not evident to us. We had to actually fight with the administration to make sure that the admission list was publicly made along with the marks which the students got. This is when we realized that many of the reserved category students actually managed to get marks way beyond what the general category students were getting. There was a situation where a general category student would just scrape through the cutoff marks, and an OBC or SC/ST student would get, let's say 70-80% marks, but still be forced to take the reserved category seats. Many of the OBC/SC/ST students who did well in exams were also coming from much more fortunate circumstances. Some of them had a middle class background, some of them had parents who were government employees etc. And the not so fortunate part of the student stream who were from poorer backgrounds or more unfortunate circumstances could not actually come into the university. One of the primary contributions of DBMSA was to make sure that the students who were getting marks above the general category cutoff would be given admission in the general category quota, so that the students who actually deserved to be getting the reserved quota would be given admission to the university. As

a result, the number of dalit bahujan students who were getting admission to the university swelled. This is not to suggest that the general category is a meritorious category. That is not what I'm trying to say, because many of the general category students were getting marks less than what reserved category students were getting. So this interpretation was important. To interpret general category as an upper category, to interpret open category also as an upper caste category.

There were other ways through which the reservations policy was being scuttled. One of the other ways was by making sure that once you pass the exam, during the interview phase you were not given admission by stating that these students didn't have "merit". SC/ST/OBC seats were left vacant and these vacant seats were later converted to general category and given to upper caste students. Technically, this is a mockery of reservations simply because reservation would then mean 50% reservation for upper castes, not 27% of reservations for OBCs or 18% for SC/ST students. When reservation becomes a question of 50% reservation for upper castes, then it is an absolute mockery of the idea of reservation, because they are getting seats way more than their percentage in the population, and OBC and other students were getting admission which is much, much less than their percentage in the population.

We could do this because at that point of time our university had a very strong students' union. We contested elections, we won all the seats. For the first time in the history of the university, DBMSA actually represented the entire students' body of the university. One lower caste Muslim student became president of the students union and all the other important seats were cornered by Dalit Bahujan students. I should also remind you that this DBMSA also had a very organic relationship with the Dalit-Bahujan employees union in the university. That also helped, in the sense that the students could talk to the employees union, they could come together and devise strategies. They would also offer help, even if it was underhand help. It was very helpful to get data from the university regarding admissions and so forth. I could imagine another scenario in universities where such power is not possible. Maybe, there are universities where student unions are not this strong, employees unions are not this strong. In such situations, I can imagine that reservations are being scuttled. If I do a thought experiment and think that, in such a scenario, if our dalit bahujan students are trying

to get admission in the general category, it would be by claiming that they are casteless. If they apply through their caste identity, obviously they would be selected only in their respective caste quota. It is again, a fundamental dilemma or a kind of a googly situation as you put it. In the sense that, if you appear casteless there is a real risk that you won't get admission at all. Always the student would try to reduce that risk and would apply through the quota. For an upper caste student it is not necessary to appear casteless to be in general category, because that is the primary reason they are called general category, because they are forward caste. If a dalit bahujan student were to appear casteless, it would immediately set them apart. I was reminded of a movie which appeared in Kerala 4-5 years ago, where the hero and his friends are sitting for an interview. They are interviewees, and are talking to each other. Suddenly they start discussing about caste and they ask each other about their caste identity. All of them are forward caste people and our hero happens to be a Dalit. They ask him "what is your caste?" and he says "I don't believe in caste, I don't have caste." and immediately they say "Oh, you are SC." This is the dilemma of a casteless person. If you want to appear modern and progressive, even then you would be marked by your caste identity, it is very difficult to escape, that is the situation.

Also, I would like to briefly touch upon issues of legality and constitution as well. That is not my domain, these are some scattered thoughts that I gathered. As you know, before Mandal happened, OBC reservations were being implemented by states. For instance, although Kerala abides by the 50% reservation mandate, it gives 40% reservation for OBCs. We can contest whether the reservations that were being given to the SC/STs were enough or not, but I would wager that the 40% reservation for OBCs is probably a close approximation to their population in the state. We should also remember that Kerala government gives reservation to Dalit Christians. If you are a Dalit and a Christian, you'll be marked as an OBC but Kerala has a provision where Dalit Chiristians are given 1% reservation within the OBC category. It is like a dilemma again. If you are a Dalit and Christian, you are not a Dalit, but still Kerala govenrment has found a way where you are specially recognized as a Dalit in the OBC category. And other shining example we have in front of us is Tamil Nadu which gives a whopping 69% reservation, and out of that 50% is for OBCs, 18% is for SCs, and I think 1% for STs. Of course, Tamil Nadu implemented these reservations way before

Mandal happened. Out of the 50%, about 20% is for MBCs, which also comprise denotified communities. The rest 30% is for BCs or OBCs, in which backward Muslims are also given special reservations. And when you come to their SC reservation, they give a special 3% to Arundhatiyars, who, as you know, are the lowest among the low castes in Tamil Nadu, they do scavenging job basically. As you would know, once the SC imposed the 50% delimitation for reservation, Tamil Nadu was in a kind of dilemma. Somehow, the then Jayalalitha government managed to pass this 69%, with the help of, I think, the Narasimha Rao government, and she managed to insert this law within the Ninth Schedule of the Constitution. Ninth schedule of the Constitution is that section of the Constitution for which judicial review is not possible, up until now. So, Jayalalitha managed to insert this particular criteria within this part of the Constitution and Tamil Nadu was able to go on with the 69% reservation criteria. For Dalit Bahujans, anything in this world poses a dilemma. As I described, the general criteria is a dilemma. Even the Ninth Schedule is a dilemma. If you ask about the history of Ninth schedule, it was first instituted by Jawaharlal Nehru to escape landlords. When land reforms were instituted, he wanted those reforms to be safe from judicial enquiry, so he inserted this law so that he could go with land reform movement without any obstruction. But, during the Indira Gandhi regime, this ninth schedule was abused by her, and she inserted a lot of laws in that section to continue with her misrule. So, ninth schedule is a double-edged sword, it can be a bad thing and a good thing. I am not saying that the reservation system followed by Tamil Nadu is a great system. On an absolute basis, probably all OBC communities are not getting reservation, probably all SCs are not getting reservations properly. But on a relative basis, it is one of the most progressive in terms of giving reservation, relative to other states. Again, expanding 50% criteria is not going to offer us a panacea either. Let's look at the example of Haryana, which is trying to give reservation for Jats, Maharashtra which is trying to get reservation for Marathas, Rajasthan which is trying to get reservation for Gujjars, and other states where forward castes are trying to become OBCs and there could be a possibility that that these states would use Ninth schedule to make sure of this and expand the criteria and that would again undermine the entire system of reservations, as we understand it. That is why I am saying that, on a relative basis, Tamil Nadu's representation could be much better compared to other states.

As far as EWS is concerned, as we know, it has passed in both houses of parliament. It didn't evoke even a muster of protest as far as I know. The question would be whether it would affect the basic structure of the Constitution. The basic structure of the Constitution was delineated in 1973 in a case known as Swami Kesavananda Bharati vs. State of Kerala. The basic structure would largely comprise the fundamental rights of a citizen, which would be right to equality, right to freedom, right to practice religion etc. These would be considered as inalienable rights of the citizen. If we were to judicially contest this EWS, the question would be whether it affects the basic structure of the Constitution. Otherwise, the parliament has unlimited rights to make amendments to the Constitution.

Anyway, I am not the person to decide about basic structure and legalities and other kinds of stuff. But, based on my experience at EFLU, I can say that nothing beats a politically motivated bunch of OBC-Dalit students and OBC-Dalit employees. If we are successful in establishing such politically motivated groups in every university, every government office, that would be the ultimate panacea for the situation that is facing us, and in my opinion, everything else would come second.

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EWS THE QUOTA TO END ALL QUOTAS

'If the government decides to give 10% to weaker sections of upper castes, directly there will not be an impact, but indirectly, it will have an impact, it will be a big disaster. Once in the garb of reservation to poor among upper castes, the criteria of economic backwardness is introduced, in future, this criteria may be advocated for SCs and STs. That is the biggest danger. That danger, Mayawati cannot understand, Ram Vilas Paswan cannot understand, and you need not talk about Ramdas Athavale, he cannot understand. There are several of our leaders, intellectuals, and people who cannot understand that when they support reservations to other classes on economic grounds, they are inviting the counter-revolution in future.'

~ Dr. Suresh Mane

This issue should be discussed on all platforms. We should not create an image that we are opposing the reservations given to the upper castes. Though this reservation might be given to the upper castes, we have to understand that it was not entirely brought in to benefit them. It was mainly brought in to bring an end to the reservation policy that benefits the downtrodden classes. And so, if social justice has to be safeguarded the Act that guarantees this 10% EWS reservation has to be repealed.

~ Dr. Thol. Thirumavalavan

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